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ABSTRACT

This issue of the Ohio State Law Journal is devoted to a symposium on the role of professional education in the contemporary university. The first paper: "The Place of Professional Education in the Life of the University," by Edward H. Levi argues for the need for more professional training in the undergraduate years. The second paper: "The Teaching and Research Missions of the University Professional School," by James C. Kirby, Jr. discusses the need for greater flexibility in legal education and curricular reform, and for more extramural research. The third paper "The Clinical Component in University Professional Education," by William Pincus deals first with clinical education and the university, and second with clinical legal education and the law school. The last paper: "The Role of the Universities in Continuing Professional Education," by Norris Darrell argues that the responsibility for continuing professional education must be shared by the professional associations and the professional educational institutions. Each of the papers is followed by a number of comments. (AF)

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SYMPOSIUM

Professional Education In The Contemporary University
Chairman, Harry W. Jones

THE PLACE OF PROFESSIONAL EDUCATION IN THE LIFE OF THE UNIVERSITY — Edward H. Levi

THE TEACHING AND RESEARCH MISSIONS OF THE UNIVERSITY PROFESSIONAL SCHOOL — James C. Kirby, Jr.

THE CLINICAL COMPONENT IN UNIVERSITY PROFESSIONAL EDUCATION — William Pincus

THE ROLE OF THE UNIVERSITIES IN CONTINUING PROFESSIONAL EDUCATION — Norris Darrell

NOTES

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Volume 32 | Spring 1971 | Number 2

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INTRODUCTORY REMARKS AT FIRST SESSION

HARRY W. JONES*

I want to thank Ervin Pollack, my onetime student and longtime friend, for that extravagantly generous introduction. It has been a pleasure and privilege for me to work with Professor Pollack and his colleagues of the College of Law Centennial Committee in the planning of this two day conference on Professional Education in the Contemporary University.

A good chairman should be chair-borne as much as possible, but a few brief remarks are unavoidable to set the stage for the four sessions of our Centennial Conference. As we first thought of it, this conference was to be another of the many useful colloquia that have been held in recent years on the subject of legal education. Rashly perhaps, we decided to widen the conference focus to professional education more generally, this with the thought that the university professional schools, whatever their differences in academic detail, share certain attributes, purposes and problems which make them a little different from other departments of the university and so make it profitable to compare them, one with the other.

This is not to say that we law school people have gone so far as to grant any of the other professions equal time. Our four principal speakers and two of our eight discussants are or were lawyers, and there is no way the dye of legal training can be rubbed off when a lawyer becomes a university administrator like Ed Levi or Allan Smith or a foundation executive like Bill Pincus. But we have an admirable representation here with us from other disciplines: Dr. Cramblett and Dr. Pace from medicine, Dr. Roaden and Dr. Hurley from education, and Dr. Smigel and Dr. Snyder from the behavioral sciences.

A word, now, as to the topic of today's opening session: "The Place of Professional Education in the Life of the University." This is a broad subject, surely, and we have in President Levi a broadly cultured man to lead our discussion of it. Questions come to mind, and the answers are not as self-evident as they are often thought to be. Although the great universities of medieval Europe offered courses of study in theology, medicine and law, it was not written in the stars that professional education of the more modern kind had to be university centered. Indeed, university medical schools were relatively slow to develop in colonial North America, and university training for the practice of law did not become the norm in the United States until a century later. Each of the callings that have come to be thought of as the "newer professions"—engineering, education, nursing, librarianship, social work and the many others—has

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* Cardozo Professor of Jurisprudence, Columbia University.

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had to make its way from specialized or trade school status into the family of university disciplines.

Tensions survive, even now. The professional schools are in the university, but are they really and wholly *of* it. The other day, I read a report charging indignantly that the professors of engineering at a university that shall go unnamed feel a closer intellectual kinship with engineers in government and business than with their professorial colleagues elsewhere in the university. To take another example, is there a university medical school that has never been criticized for its supposed separatist attitude towards the rest of the university? And consider the familiar criticism from the sociologists that university law teachers, by and large, are more likely to think of themselves as lawyers who happen to be doing their professional work at a law school than as university professors who happen to be teaching law rather than something else.

So it is hoped that this opening session on "The Place of the Professional School in the Life of the University" will, among other things, cause us to reflect on two questions that seem to me vital for the future of professional education: *First*, What, distinctively, does the university give the professional school, apart from funds and administrative services, that makes that school a better place than it would be if not university connected? and, *Second*—and I think harder—Precisely what, if anything, do the professional schools contribute to the intellectual and cultural mix that makes a great university?

THE PLACE OF PROFESSIONAL EDUCATION IN THE LIFE OF THE UNIVERSITY

EDWARD H. LEVI*

The subject we are called upon to discuss is one frequently set for ceremonial occasions. We tend to romanticize the ideal of an undergraduate and graduate education—kept non-professional. A conflict is seen as arising when professional education moves into this haven. So far as our law schools are concerned, the history evoked is the overtaking of apprenticeship training by the schools, and then the movement of the schools into the universities. We think of the same thing as having happened in a much bigger way with medicine. We note also the emergence of newer professions which already have created schools within the universities, or are about to do so. The history, looked at from this narrow point of view, suggests that there is a question as to whether any particular profession should receive its formal professional training within a university. It reminds us, in any event, that successful training can take place outside the general academic halls. At the present time, the older professional schools see themselves as important, though separate, parts of the university. They naturally wish to maintain their own strength, and to a considerable extent their separateness. Since the topic is ceremonial, the conflict is seen as resolved by a proper appreciation of what each part of the university contributes to a whole, and an expectation of further, usually broadening, relationships. Frequently, not much is said about that part of the profession which continues outside the university; not much is said either about the kind of minimum commitment which is necessary before any part of a university, including a professional school, can contribute to the whole.

But the topic is a serious one, and particularly when new responsibilities are placed upon universities and upon the professions, and when the results of our present structure and arrangements are sufficiently disconcerting to suggest major alterations.

It is not just a matter of historical peculiarity to note that, if one traces the modern university to the medieval university, then professional education is central. The notion that professional education has somehow forced its way into university education is a kind of Americanism. But as a matter of history, if we trace the modern university to the medieval university, then the point should be made that professional education was the reason for that university. In the medieval university, work was directed toward the professions of theology, law, and medicine. Among the oldest universities there are those which began as law schools and then

* President, University of Chicago.

built around the study of law to become more general academies. The university itself was a kind of guild collectivity, sharing some of the same characteristics of other more clearly vocational guilds. If one thinks of the liberal arts emphasis of the medieval university as the recapturing of an older tradition, this, too, has a professional emphasis in its desire to inculcate the skills required for a citizen. This suggests the importance to higher education of a primary concern for the kind of doing and understanding believed to be helpful to the individual who is going to handle important problems for individuals and for the society. It is an intellectual tradition, but it involves skills and training for doing. If there is relevance in this history, and I believe there is, it is no compelling argument against the inclusion of subject matter within a university to say that the approach is professional. There are aspects of a truly professional approach which have been, and continue to be, basic to proper university work. There is a sense in which the best university education, and the only real university education, is professional. One has to remember that the liberal arts themselves were training for the profession of a public citizen.

Whatever the history, the modern university faces a difficult set of problems which require decisions as to what should be included within its responsibilities. The land grant impetus helped create a new kind of institution with enormous service obligations. At the same time, the land grant moneys enhanced liberal arts training. The land grant help furthered the idea of the applied wonders of the enlightenment. The modern state university is in this tradition. It is a marvelous facility. All kinds of duties have been placed upon it because it is such a useful agency. But it is hard to know what its proper boundaries ought to be. Moreover, the liberal arts concept itself, never fully controlling for a university in any event, has become a weakened guide. Changes in the structure of life, in training for vocations, and the rejection of class distinctions never accepted as ideal in the United States (distinctions which no doubt helped to support the idea of what the liberal arts might be, or what was properly professional and not vocational) have made it more difficult to determine which skills ought to be taught at the university level. Decisions of this kind become more important and immediate once it is decided a general education at the college level ought to be available to every citizen. There is a strong temptation to believe it makes no difference. Tastes and needs differ; there is to be education for all anyway; perhaps the institution should offer something for everyone. That kind of happy evasion of responsibility cannot hold for long. There are important overall problems of the allocation of educational resources within the society, and among the levels of education. Within individual institutions there are questions which relate to their own integrity. The questions are: What can an in-

stitution do well, and what is the effect of the doing on the quality of other activities of the enterprise? Universities do not perform well in some areas. Their performance may be no better, and indeed be worse, than that of other possible institutions. This is true in many of the applied or practical areas. There are striking differences among diverse fields, as indeed among universities. For example, many areas are not served by a profession. There is no one profession—some would say there isn't any at all—despite the lawyers, the political scientists, the sociologists, the psychologists, the economists—which represents the social sciences. Many items which become the focus for pressures of the moment, such as remedies for pollution of the environment, find no ready profession to test and carry out solutions in the practical sphere. Where there is no profession, it is particularly difficult for the university to carry out a program involving all kinds of facets of life, even though the need to do so may seem great. And where there is a profession, one has the opportunity and the necessity to determine the best division of responsibility between the university and the profession. Universities do run medical clinics, but it does not seem likely they should run the court system, and it is at least questionable how much of the delivery of health care should be centered in educational institutions, if the desire is to have the best health care, or the best educational institutions.

Universities have to be concerned about the effect of one function upon another. Unless the university is merely a geographical place—and perhaps even if that is all it is—it must be realized that the inclusion of skills and subjects has an effect on other skills and subjects. It is both a shallow and incorrect answer to say this variety is justified because it mirrors life. New skills and subject matter result not only in different approaches which may be seriously incompatible, but also in the inclusion of faculty who will influence not only their own area but have an influence throughout the institution. We like to believe this is good, but in fact it is good only under some circumstances. The question need not be what is important or not, nor a judgment as to what areas can have quality of their own, but rather what is sufficiently related to the ways of thought and to the particular and appropriate standards of excellence for the entire institution, so that inclusion is mutually helpful. Admittedly there are ways around this view of the total institution. An institution can be so divided that it is really one institution in name only. It may find then that its salvation is in separation. But even if this, in a given case, is the best possible, the implications on accountability, institutional integrity, and the university ideal are disturbing.

As one thinks of professional education, therefore, one must see a relationship in one direction to a profession, and in the other direction to the life of the university. Professional education which has no particular

need for the disciplined process of criticism and discussion, closely related to a shared body of knowledge, gains less and contributes less to the university. This is a matter of degree and emphasis—the impact of inclusion to increase either the centrifugal or centripetal forces within the institution, and thus to reduce or increase shared values. The sporadic attempts to sustain the theater and the arts generally, by placing them under the university mantle, raise this kind of problem in an appealing way. There are no automatic answers. But, if the interrelationship is to have qualitative advantages both to the institution as a whole and to the separate discipline, there are concerns which can be stated. For example, there is the right to insist, from a university point of view, that professional education seriously examine the problems with which the professions deal, in part, but only in part, because a never-ending attempt to determine what is crucial is implicit in university education. Thus, the training cannot be regarded as set solely by the way the professions now operate. It is a criticism of social service schools if they have not been concerned with the theory of the approach to poverty and social welfare, but instead have been totally involved in the training of practitioners. It is a criticism of law schools if matters of public policy are totally submerged in the analysis of appellate opinions, or are skewed by absorption into the concerns of constitutionalism without recognition of the broader domain of how law operates. A statement such as this last one is often taken as an emphasis on law in action, as in a way it is, but also as a plea for the relevance to law training of the kind of social science research which goes on outside law schools. But that kind of research, while it always may be important for law, to the extent that the research itself is opinion-making and thus value-forming for the society, is not necessarily germane to direct the insights and judgments which should illuminate the professional study of law.

In any event, law schools might have done better in recent years in the United States if they had given greater attention to legal history and jurisprudence as a way of looking at problems which are around us, and which tend to evoke the coercive power of law. I mention these subjects, perhaps as symbols, to stress the importance to a discipline of the conscious attempt to draw upon and reformulate concepts and distinctions—which the study of law in the United States certainly does—and also to emphasize the importance of the continuing endeavor to make these concepts and distinctions basic, transcending the compartmentalization within the subject, while at the same time relating the approaches of the moment to recorded experience. The point, then, is that not only must the problems with which the profession deals be seen free from the confining structures of prevailing practice, but also there must be, to justify university professional training, the reality of an intellectual discipline which can draw upon itself, has the ability to build upon and modify ideas, and is capable of pro-

viding learning and insight. Not everything which calls itself a profession has an intellectual discipline to draw upon, and even if it does have this history and structure, ways of preparing for a profession may be adopted which belittle and fail to draw upon that intellectual discipline. And if this happens within a university, the disservice has consequences not only for that segment, but for the institution as a whole.

When the professions through professional education come to the university, the terms upon which they come should include a commitment to the intellectual process and the pursuit of truth. There are special reasons for this. The intellectual process is the central means of communication within the university. It is the chief means for the university's contribution to the society. It is, indeed, the university's way of exploring the role of the non-rational experience, the place and meaning of the fundamental presuppositions which ultimately provide the basis for institutions and values, and for attempting to understand the relationships between the known and the unknown. One does not have to argue that the non-rational is an important part of life. There is nothing strange or unexpected in the continuation or reappearance of various movements which find exaltation or fulfillment in ways other than intellectual discourse or inquiry. Moreover, no one need contend the intellect exists by itself—a conception which is only a mockery. Nevertheless, the essence of a university is in the belief in the importance of ideas, the necessity to rethink them, to create them through understanding and invention, a willingness to respond to criticism and to the results of experiments—in short, a truth-finding process of a particular kind. There is an analogy here to the ideal of the objective rule of law and to constitutional protections, which are protections mainly because they require a sober second thought. The question is not the emphasis to be given to the mysteries or certainties for the good of individuals and societies, but only the role of the universities. The odd thing about these days, as Sir Isaiah Berlin has written, is that general movements of irrationality, always to be expected, have been joined by the popularized and distorted slogans taken out of science. The combined emphasis is upon the irrational, the unconscious, and the automaticity of scientific laws which control all things, including words and thoughts, and control the process of reasoning. While all this can be a useful caution and, as it has been, part of the intellectual process itself, the effect has been to downgrade the possibility and ideal of reason, and to disparage the ideal of objective truth. A strange aspect of this joining of movements is that, in part, it reflects an interest in but also an attack upon the social sciences by the natural sciences. The movements are also marked by hostility to those areas of the social sciences which have more structures and, therefore, more independence of their own, including economics and law. It is as though the problems of the natural sciences were to be regarded as suitable subjects for in-

quiry, to be investigated through the rational process, but in the social sciences, the problems and thoughts about them—the subjects of inquiry and the process of inquiry—were to be viewed as predetermined, where reason makes no independent contribution. In this context, ideas are less important than the personality and style of those who originate them; ideas are viewed only as good as popular acceptance makes them, either now or by someone's judgment of what wins in the future. The influence of the popular is more marked because of the impact of television and immediate communication, tending to make a one-dimensional society. These movements highlight the vulnerability of the universities. The denigration of the truth-finding process, which is probably never intended in its full sweep, gives to the universities little reason for existence other than as power mechanisms. But viewed as power mechanisms, they have, in fact, little power to defend themselves from pressures from without, and little basis for standards of achievement within. This kind of power not only corrupts the universities; it removes the basis for the only kind of power which ultimately supports their influence.

This setting has relevance to the study of law as a professional subject in the universities. The training of a lawyer is necessarily concerned with the mastery of the means which produce acquiescence or agreement. Then law as a responsive instrument within the society continually borrows and incorporates doctrines, popular as of the moment, taken from many disciplines, reflecting over-simplification and distortion. There are many examples of this in the academic legal literature and in the opinions of judges. The ability to borrow doctrines and to use them is an important part of the lawyer's training; again the emphasis can be more on persuasion than on correctness. In times of heightened social conflict, the temptation is strong not to view law as an intellectual discipline which can be drawn upon and is capable of providing insight and learning, but solely as a reflection of other forces as to which law and law study have little to add, and to view the training of a lawyer as basically the training of agents in participation. Doctrines and legal institutions are not regarded as providing illumination of proposed remedies, but solely as devices for leaping to solutions or impediments to be viewed with impatience. This impatience is reflected at various levels within the profession and also in the schools. Such a view of law does not remove the necessity for and perhaps the importance of a profession which represents others, advances causes, and accomplishes accepted solutions. But it does raise questions as to the place and subject matter of law study, not unlike those which might be asked about schools of speech, within a university. It has been recently written in description of many law students: "They do not want to understand themselves or others if that means being less emotionally involved with their clients and their causes. They cultivate the sense of a deeply

felt commitment; it is something to be lived and not analyzed. Thus in a sense they resent what has been the guiding principle of legal education; learning to take either side of the argument."[1] Yet in some form or another, learning to take both sides of the argument, whether it arises out of the adversary nature of law or not, is essential to understanding and knowing. It is not paradoxical, but it may seem so, that the adversary nature of law, frequently foolishly criticized as hostile to truth and commitment, has made available to law study the imprint of the truth-finding process which most scholars would understand to be essential if scientific doctrines were not to be accepted or rejected simply as articles of faith.

The important and desirable characteristic of the study of law as a university discipline is the necessity to go beyond stated rules to a consideration of basic values, and to use these values and their relationships in a continuing critique of the impact of those social institutions which have the backing or coercive power of the state upon the lives of individuals. Traditions among legal systems vary—and within these traditions there are cycles of stability and change—but the drive to see more basic principles, or the law beyond the law (present both within the hierarchy of a legal system and outside of it), reflects a moral purpose and endows the study of law with a seriousness and centrality which makes it a liberal arts subject and helps to make law a profession. A driving force within professional law study is the effort to come to terms with the relationship between commitment, disciplined inquiry, and craftsmanship. If the moral purpose is seriously held, and the nature of the subject understood, craftsmanship will be highly valued. Max Weber characterized the desire of the lawyer to be seen as dealing with more than set rules as arising, in part, from an attempt to increase his sense of power. "The more the impression grows that legal orders as such are no more than 'technical tools,' the more violently will such degradation be rejected by the lawyers." This may be true. If so, it is fortunate. The subject matter, whether in the hands of lawyers, political scientists, or sociologists, requires more than a rule book. Even in those terms, one has to know how to work the rules with a purpose if one is to understand them. For what is at issue is the basis of government, the idea of a covenant which joins people, the concepts of legitimacy, authority and control of participation, the essential attributes of fairness, problems of intention and act, the characteristics by which human actions are to be judged; such as, motive, intent, expectations, and the role of ambiguity, since it is "a hard thing in great affairs to satisfy all sides"—in short, the ingredients of a jurisprudence. The central concern of law for the distribution and control of powers within the society, the impact of these powers upon movements and persons, the status of law itself as a responsive instrument, and the curious isolation and

[1] Stone, *Review of Psychiatry for Lawyers*, 83 HARV. L. REV. 1737, 1742 (1970).

interrelationship which law has to other disciplines, give to the study of law special opportunities and heavy responsibilities within the university.

But it is difficult to say, despite the obvious virtues of legal education in the United States, that this responsibility is now being carried adequately. The most important fact about the study of law in the United States is that the study of law is almost totally absent from the undergraduate curriculum. The absence is, in large part, due to the growth of professional education, and the placing of professional education outside the standard four-year program. The development has been helped by the belief that the longest education is the best, and that those who are serious about a subject will gain mastery of it in the later graduate or professional years. This pre-emption of mastery over basic subjects related to human action and choice by the graduate and professional schools has helped to create, in the midst of more efforts at education than the world has ever known, an uneducated society which does not know where it stands on the basic issues of our time, and does not know how to approach or think about these issues. One needs to remind oneself of the initial thrust and importance of professional education within a university, with the ingredients of moral purpose and the seriousness of learning as mastery for doing. The graduate departments and professional schools include the major areas of knowledge. The pre-emption of the subject matter is, of course, not always complete. Law happens to be a startling example where a combination of circumstances has resulted in an almost complete withdrawal of the subject matter from the undergraduate. The result is that liberal or general education, always viewed as important for citizenship, avoids the hard questions and the learning of civilizations concerning the relationships between the individual and the state. The importance of a liberal education for every citizen is greatly diminished when the basic subjects relating to man in society are either not taught at all or are taught only as a preliminary exploration, free from the challenge (which the attempt to gain mastery sets) that the student may have to act upon what he has learned. In many areas, and particularly in the humanities and in the social sciences, the mastery of a discipline at the undergraduate level has vanished.

Admittedly, this set of problems has great complexity. The undergraduate four-year college believes it is protected from the encroachment of the graduate and professional schools by the undergraduate college's insistence that there be a large block of time in which the student has the freedom to think and explore, free from the pressures of mastery or the ability to do. But the results have been somewhat different from that which was intended. There is a sense in which education can and should be endless. It suffers if it is aimless. Undergraduate education, having no particular structure, other than the contours of large subject matters

within which there can be, in effect, distribution requirements, is particularly vulnerable to divisions of subject matter, reflecting the compartmentalization of departments and courses at the graduate level and following from the organization of faculties into guilds. Whatever may be said about this organization, it loses much of its persuasiveness when the student is not confronted with the problems to be solved, the craft to be achieved, the purposes to be served. The undergraduate program is caught in the dilemma of unfocused general courses, or small units which, even when sequential, do not have the insistence of problem-solving or wholeness, unless viewed in terms of work which will come years later. The original professional thrust of undergraduate study helped to organize the work around problems and mastery. It had the advantage of the purpose of the professions which helped to organize the disciplines. It is that kind of organization of work around problems and responsibility which is needed to give the undergraduate program its own integrity and freedom. This does not require the undergraduate program to pretend to a mastery which it cannot give. Stages of specialization are properly reserved for graduate work. But we should not be so easily convinced that a considerable amount of mastery is not possible at the undergraduate level. Law is a good example. Not only should some law be taught seriously to every undergraduate, but the fact is that there is no reason at all why the minimum university training of a lawyer cannot be accomplished through two years of professional training in the undergraduate years. I note in passing that placing some of the professional training of the lawyer into the undergraduate years will have an advantage if it enables the law student to continue the taking of non-law undergraduate courses in related fields. Perhaps the greatest argument against this drastic shortening of years may be the lack of attention which this may suggest will be given to cultural history. Yet the present system does not seem to have effectively provided this dimension.

I have used law as an example of the distortions which now exist in higher education—a subject which should be taught in some form to every undergraduate is hardly taught at all at the undergraduate level, professional training which could be accomplished in four years now takes seven. There are other examples. The training of a physician now occupies so many years as to constitute a national scandal if the delivery of health care is important. There is no reason, other than status, that schools of business or engineering must seek to be completely graduate. Nor is the frequent separation between teaching at the undergraduate level and research at the graduate true to the requirements of good teaching or effective learning. Beyond all this, we should not accept the professions as given. The professions themselves suffer not only because they have become vertically fragmented, but there has been a failure to acknowledge stages of mastery

which could be extremely important, for example, in medicine and law. On these matters, there has been a defeating interaction between the universities and the professions. The universities have accepted the professions as they are, and the professions have encouraged the universities to continually lengthen the period of academic training required for all.

The length of time is a serious matter. If there is to be higher education for all who can qualify, then the costs of higher education will not only continue to increase but will be magnified. There is a problem of the allocation of educational resources among the various levels of education. And there is also a cost to the student, not only in monetary terms. More than that, it is a serious matter for a society to remove from the doing of the community, and to shield from the choices which independent citizens must make, a large segment of the population for a longer period than is necessary.

In our present inflexible system, there is much room for greater flexibility. We need a period of experimentation. Many of the pressures of the past now appear to have been mistaken as, for example, the pressures against the night law school. We ought to try to have a period where there will be a suspension of the cartelized rules of associations and accreditation, so that we can see the benefits which might come from a variety of different forms. The two-year law school at the professional level, as an alternative, is surely a possibility. The three-year school, joined to three years of college, is hardly adventuresome. The award of a junior degree in law or a new kind of degree for training in public service, including law and economics and other subjects, might help to reorganize undergraduate education, and if accomplished at the undergraduate level, might carry the opportunity for preparing the student, even in the face of the likelihood that specialized training would be later required.

Those who are interested in professional education within the universities cannot be comforted with the thought that undergraduate education comes first and can take care of itself. Much of the organization of knowledge and the sense of purpose required for professional education should come at the undergraduate level. The failure to see professional education in this setting has harmed the organization of knowledge, contributed to the delaying years, and reduced the level of public discussion and understanding. They should not be comforted either because the organization of the professions has been such as to force the universities and the professional schools to undertake more and more activities, without thought as to what the new functions may be doing to the university, whether the society is better served thereby, whether the activities could not be better handled by the professions themselves. The rigidities within the professions, the failure of new forms to emerge, to some extent are a criticism of the universities and of the professional schools. Those who are inter-

ested in professional education cannot help but be concerned by the lengthening of the years required, including the years at the graduate level. There is some reason to suggest that lawyers who should be interested in educational forces within the society and the shape of the society should be most concerned about this trend. Of course, those who are involved in professional education can take pride in what has been developed; that pride must be matched with concern and inventiveness for the changes which should come.

COMMENTS:

Discussant

ALLAN F. SMITH*

Mr. Chairman, President Fawcett, ladies and gentlemen, I am reminded by the number of titles that Harry gave me, Professor, Dean, Vice-President that these are listed in descending order of capability of affecting anyone. I'm glad he wound up with the proper title at the end. The story is told of Eva Peron, at the height of the Peronist movement, when she visited Franco in Spain. He had arranged for a motorcade down the street, but it didn't go off as planned because the assembled populace instead of shouting, "Viva Eva," or whatever they were supposed to, shouted "Prostitute," "Whore," and this was very upsetting to Eva. When they got back to the Palace she was weeping and Franco in an effort to pacify her said, "Do not worry Madam, I haven't been in the Army for thirty years and they still call me General." So, I don't really object anymore to almost any title that is given to me.

To comment on these provocative remarks of President Levi is a pretty difficult job, because, as is his usual wont, he has presented ideas which he has carefully reviewed in his own mind and carefully challenged in his broad experience in education. We are expected in a brief time to find comments that can either supplement or challenge the ideas that have been thus expressed. I don't think I want to get into the question with him of whether a two-year preparatory session is enough for pre-legal education. I can join whole heartedly in the proposition that if we cannot find a way to complete an educational process, not only for our professions, but for our general citizens, in a shorter time, we are indeed not going to be able to supply the resources that are needed for our educational job.

I heard another story not long ago about a man who was driving down a dirt road and found himself behind a very large truck, was unable to get around and it was very distressing. Moreover, the truck would stop about every mile, the driver would get out of the cab, go back and beat on the side of the van and get back in and drive another mile and repeat the process. After about the third of these incidents the man could stand it no longer so at the next stop he got out and asked the truck driver, "What in the world are you doing? I'm observing your conduct here, and I just want to know why?" The truck driver said, "It's very easy, this is a two-ton truck, there are four tons of canaries in there and if I don't keep a lot of birds flying, I'm not going to get where I'm going!"

My friend in the Physics Department tells me that his knowledge of Physics is somewhat less than perfect, but nonetheless I think his idea ex-

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presses a definition today of a University that is very apt. Every University today has the job of keeping a lot of birds flying if it is going to get where it is supposed to get. This assumes that it knows its destination and can define its destination, but as Mr. Levi has said, the University is being called upon today to add to its burdens another ton or so of canaries, some of which have no place, nothing to do with a University, and I would certainly share the expressed view here that the University as an institution is ill-equipped and undesireable as an instrument of direct social action. We do not recruit our faculties for the purpose of running social action experiments or certainly not of maintaining social action agencies. A society that calls now upon universities, because they have so successfully done some of the jobs for which they were created, to carry out that kind of activity is one of the sad parts of today's operation of a University.

They don't do practical things well. They don't do anything well that is not involved, as Mr. Levi has said, with the intellectual pursuit of truth. Experiment, yes. Analysis, yes. Speculation, yes. Talk, yes. Exchange of ideas, good, bad, well thought out or poor, yes. But to engage in activity that is designed to make our society run more smoothly in a particular social way, is not a function of a University.

There have been disputes, of course, about the place of professional schools in a University. Charges are made that professional schools are parasitic to the basic undergraduate liberal arts program of the university, that they absorbed those students who are produced at the undergraduate level. There have been reciprocal charges. I think Mr. Levi makes this point, that indeed the professional education is the flower which the rest of the university labors to produce. I guess I prefer not to join the dispute, for I think that the balance of trade between the professional school and the undergraduate schools is probably not constant. There are times when the professional schools certainly depend upon the life, the strength, the liberal arts faculties at the college in order to maintain their own vitality. There are also times when the presence and the activities of professional schools in a university gives it a flavor, a direction for the efforts of the disciplinary scholars which would certainly otherwise be missing. I think in point of fact that many of the professional schools have not taken advantage of their presence in a university to maintain that kind of dialogue and interchange that would strengthen both aspects of the university. They have remained too isolated from their colleagues in the disciplines. It's very dangerous to generalize, but I would certainly agree that it is pretty hard right now to get a member of the professiorial staff of a law school to leave his rostrum in the professional school and move to a rostrum which would be confronted by undergraduate students. Yet I can think of no more important part of education for general citizenship than an understanding of our legal system, and an understanding of the

role of law as a social institution. It is to me somewhat criminal that a great many holders of the baccalaureate degree (by which we purport to measure the existence of an educated man or woman) have so little understanding of our legal system, its limitations, its strengths and its role in our society. We're sadly deficient if the general citizen lacks that understanding. We leave that kind of job to others, sometimes the political scientists, the historian, the sociologist. In all deference to their capabilities, I incline to the belief that the professional law teacher, if he would, could do a better job of undertaking the responsibility to bring to the liberal arts training an understanding of our legal system.

I suppose it's a compliment in some ways to our legal system that society is always asking it to become the forum for the resolution of more and more of societies' problems. I have the uneasy feeling, however, that there may be some serious misconceptions about the limits of the capabilities of our legal system. A system that is designed to resolve disputes about contracts, labor relations and a number of other things, anti-social conduct known as crimes, may not be the best system in which to solve for example, the horrendous environmental problems that we now face. Lawyers are not noted for their timidity or their humility. Indeed, they do generally assume that they can, through our legal system, and through their own skills, solve any problems and dispose of them. I suggest that if we have in our profession and in our professional education any reservations about the limits of its capability that we ought to make them known and understood by the members of society lest they impose burdens upon our system that will break it down. A non-professional society must know of those limitations and those fears if they are to be effective.

I was strictly limited in my time and I have probably exhausted most of it. I do want for one moment to comment on the suggestion that perhaps two years of professional training in a law school is enough. I think it may be. There is a fashionable expression that has been around for a long time that law schools traditionally scare their first-year students to death, work their second-year students to death and bore their third-year students to death. I'm not at all sure that's a real attitude but if it is we could probably do without the year of boredom. We could, perhaps, accomplish in two years the kind of training that would permit a man to operate professionally in our society. It is very clear that one could go to law school ten years and not expose himself to all the knowledge that is accumulated and necessary to function effectively in our legal system. We have to depend in the final analysis upon a training which produces methodology, skills, attitudes, capabilities that will let the lawyer operate in a wide range of areas with which he has not previously been concerned and perhaps two years is enough to bring about that kind of professional education, that kind of capacity to search for truth as well as developing the

professional skills. It is certainly clear that many of the so-called professional skills of the lawyer are developed very heavily after he leaves law school, whether it is two or three years in length. I think we probably would have some explaining to do to the profession were we to move perceptibly in that direction, but I am concerned and I thought Mr. Levi was going to make a remark or two about this with the move toward increasing clinical training in the law school itself. We're going to have a whole session on that tomorrow and I suspect that a case will be made for increasing the quantum of clinical training that is included in the professional education of the law student. I have great reservations about whether that should be substituted for what we are now doing or added to what we are now doing in the professional education. I think there is a great place for clinical training as an extracurricular activity, as summer work. It's very clear that the professional man needs it, but I'm not sure that law schools are the place in which that is best carried out. That's the job of the profession of which Mr. Levi spoke outside of the university. That's the job of which that profession is well equipped; it is not a job for which the law schools are particularly well-equipped. I probably should not have mentioned this subject since I won't be around to defend that idea tomorrow and you will discuss it with others who have thought far more extensively and probably far more wisely. As I say, it's difficult to comment on Mr. Levi's basic proposition other than to say, I concur.

COMMENTS:

Discussant

RICHARD C. SNYDER*

President Levi has said some very important things on this ceremonial occasion. I hope all those interested in the future health of higher education will give his paper the systematic attention it deserves. If taken seriously, his provocative analysis and recommendations could have far-reaching consequences.

I share with both President Levi and Vice President Smith their deep concern over the integrity of the university, over the functional boundary between the university and its environment, over the excessive (and often inappropriate) demands upon universities, and over the dangers inherent in a partisan role for the university in the various power struggles which occur outside its gates.

However, I wish to raise several questions regarding the relationship between the way this set of concerns is expressed and prescriptive implications which might flow from it. In so doing, I make no attribution of positions to President Levi and Vice President Smith which they did not or would not take.

I.

The concerns noted above derive, in essence, from diversion of scarce resources, dilution of energy and purpose, or outright subversion with respect to the university's fundamental values and functions, however the latter are defined. There are things the university does well (e.g., teaching and research), and some it does badly, and it ought to stick to the former. There is an extremely important line to be drawn here, though clear and workable criteria widely shared by members of the university community have been difficult to come by. This may be the heart of the problem of maintaining the integrity of the institution. Intellectual discipline and substance are certainly germane, but I wonder if saying the university is "not good at practical things" may not be misleading and counter-productive at this moment in time. Given the present "popularity of irrationality"—admittedly a source of danger to certain values the university stands for—and a culture which has been markedly pragmatic, many who attack higher education do so on grounds of its impracticality, i.e., much of what is done on the campus is useless or unimportant. Student complaints of irrelevance reinforce the image of the intellectual way of life as a frivolous luxury.

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Neither Dr. Levi or Dr. Smith would argue that the functional division of labor between the university and the society ought be so defined as to place ideas, rationality, theory, and thinking on one side of a line and their opposites on the other. Nor would they deny that the university's educational and research pursuits have something to do with contemporary problems. If society had an accurate view of what goes on in the university—what advanced learning, inquiry, disciplined self-criticism, and evaluation of ideas are really about and what pertinent knowledge of human nature and the physical world are available,—then the flat statement that the university ought not to help solve the world's problems might be less open to serious misunderstanding.

In addition to deciding what kinds of activities constitute the core of the university's mission and what kinds of involvement in the larger community are legitimate extensions of the university's capabilities, two other questions are worthy of consideration: (1) does the university have a vested interest in, or any responsibility for, the way its values are perceived and treated in society? and (2) can the university protect its integrity (while asking for substantial public support) solely by employing negative criteria to exclude items from its agenda?

The point becomes even more crucial if one asserts that the university ought to be a critic, not a "doer." I personally believe that the subjection of the prevailing social and political order to continuous, rigorous, impartial criticism, and the preservation of the autonomy of rational inquiry are among the highly significant (and largely unfinished) results of the Enlightenment. I also believe that as complex societies have evolved over the past 200 years, institutions of higher learning are indispensable to the effective discharge of these functions. However, if the university wishes to be taken seriously as a constructive, dispassionate critic, what are the necessary bases of public understanding, acceptance, and credibility? I venture to suggest at least three. First, it must have a firm grasp of the basic phenomena, problems, and situations of action of the institutions, organizations, and programs it criticizes. Second, the university must be more sensitive to the *unintended* consequences of its activities for the power struggles mentioned earlier. Third, the university must be more explicit about the *bases* of its criticism, in particular the relationship of the substance of criticism to the *processes* through which it is generated.

Rapid, manifold, and as yet imperfectly understood changes in the university's operating milieu may compel a thorough review of the boundary issue to the end that the university's value commitments are matched by its capacity to adapt constructively. Obviously this requirement characterizes all major institutions and organizations, but the problem of the university may be uniquely difficult and less familiar. The three suggestions offered above imply a more effective set of communication links between the uni-

versity and society, and very possibly a new set of mutual understandings. If the university is to study the world according to its own purposes and procedures, the image of impracticality, combined with the lack of widespread comprehension concerning its intellectual aims and processes, could stand as formidable barriers to the pursuit of truth and the establishment of firm grounds for criticism. Public distrust of, and ambivalence toward, research may be directly related to a failure to convey an appreciation of the *practical* importance of systematic knowledge. Paying more attention to the unintended consequences of education, research, and criticism does not and should not put on the university total responsibility for all such consequences. Nonetheless, an apparent unwillingness to diagnose and counteract misperceptions of the impact of university activities risks exactly the kind of inappropriate demands and attacks it now suffers. That the issues and choices involved in clarifying this relationship, in maintaining a delicate balance between objectivity and partisanship, and in protecting simultaneously research and criticism, are highly complex goes without saying, but the stakes seem inversely related to the amount of attention paid thus far.

The third suggestion is a reminder that the mounting of social and political ciriticism, in the sense I am sure is intended by Dr. Levi unaccompanied by an explanation of how the university's intellectual rules and norms may differ significantly from those employed by other agencies, is an invitation to rejection of criticism, not on grounds of informed choice, but on grounds of perceived identity with any unacceptable criticism from other sources, or on grounds of irresponsibility. Surely the absence of general public awareness of the rules and processes for arriving at valid or persuasive conclusions weakens the university's claim to be a respected critic.

The foregoing is intended only to query whether the boundary issue also includes the university's high priority interest in public understanding and support of its value commitments, and whether these are likely given an arbitrarily restricted or ambiguous conception of how its "involvement" is to be defined.

II.

Dr. Levi's interesting suggestion that professional schools should take lead in re-creating the liberal arts deserves serious discussion. As one means of justifying this conclusion, let me risk several flat assertions and ask that the reader tolerate for the moment a lack of supporting evidence while testing the statements by his own knowledge or experience.

1. For the most part, and with important exceptions, higher education has become prolonged, ritualized, overspecialized, fragmented, and lacking in significant focus from the standpoint of the individual learner, of new

social roles and leadership skills which are needed, and of the kind of public citizenship a complex, self-determined society depends on.

2. Undergraduate study outside of professional programs is increasingly marked by the specialized disciplinary major and by continued deterioration of the sometime aspiration for *general* education in the United States.

3. Discipline-based departments are manned in the main by scholar-teachers who owe allegiance to professions, majors tend to be exposed to a curriculum modeled closely on graduate programs, and the tension or conflict between major and non-major course offerings remains unresolved.

4. The usual collection of required and elective courses does *not* appear to produce (a) an integrated set of learning experiences, (b) generalized or generalizable knowledge usable in changing contexts, (c) basic intellectual capabilities independent of particular fields and slow to obsolesce. Hence, the likelihood of certain key attributes being widely shared among graduates is diminished.

5. The social organization of the contemporary university encourages and rewards specialization—the division and subdivision of areas of concern—which makes it difficult if not impossible for future teachers, lawyers, doctors, administrators, and the like to find introductions to cognate disciplines especially adapted to their needs.

6. As nonprofessional curricula become increasingly professionalized (in the sense mentioned under 3 above), professional schools seem to be "liberalizing" their curricula, i.e., preparation programs tend to be less narrowly specialized and therefore partially dependent on competences not normally found among their own faculty members or on courses which are inter- or non-disciplinary.

7. Despite (6), the "liberal arts" are still considered peripheral to professional education, partly because the so-called knowledge explosion has resulted in more curriculum content, and liberal arts faculties still look down on professional schools as primarily vocational, as not properly academic, and as a-theoretical. (This stereotype operates in reverse: professional school faculties may perceive their liberal arts colleagues as "purists," as too abstract or theoretical in orientation, and as "unrealistic").

8. On balance, the professional schools may be more open to meaningful re-evaluation of educational purposes and programs than the liberal arts, partly because the former have practising constituencies who provide some feedback, and partly because of the impact of multiple social change on the institutional and organizational roles for which the professional schools prepare. (Except for the correlation of nonprofessional degrees with occupational income and of grades with job performance, bases of evaluation of the efficacy of undergraduate liberal arts instruction are virtually non-existent.)

9. While student dissatisfaction with education undoubtedly exists within professional schools, questions concerning "relevance" (regardless of how well-founded) are raised most frequently and most loudly in the liberal arts.

10. The really vexing problems which confront us—educational, moral, social, political, and technological—do not lie squarely within the domain of any one academic discipline or department, and accordingly faculties and administrators find it difficult to re-direct the university's intellectual resources toward these problems. On the other hand, it is difficult to find a sector of professional education not profoundly and immediately affected by change and the new situations which flow from it.

To the extent such statements—stimulated by Dr. Levi though not attributable to him—are tenable, one might argue that professional schools have the largest stake in the kind of *common*, *general*, *disciplined*, and *focussed* education I understand him to be advocating. In the context of the older liberal arts ideal, the qualities felt to mark the educated individual transcended disciplines *qua* disciplines. Rigorous pursuit of objective truth (Dr. Levi's phrase) was not assumed to imply a random walk through various specialized sectors of the curriculum. The emphasis was on intellectual processes applicable to pervasive, non-disciplinary concerns. Moreover, a "common training for public citizens" (also Dr. Levi's phrase) seems to entail a set of learning experiences designed to induce certain habits of thought as well as an awareness of enduring problems, situations, questions, and choices which epitomize social life. Such components are (again in terms of the liberal arts ideal) deemed important enough to society to take priority over (but not exclude) individual interests and vocational needs. Fragmented curricula and specialization are unlikely to produce those shared characteristics upon which enlightened citizenship depends.

Linked to the older concept of a liberal education was, of course, general education—indeed the two terms have been used interchangeably. It is often inferred, if not stated openly, that the opposite of specialization is a kind of educational amorphousness. To many, "general" connotes either abstract elements (presumably not anchored to reality) or a miscellany of subjects to be sampled superficially, the result being a smattering of knowledge or ignorance. But general can mean, and I think does mean, within the earlier definition of a liberal education, *widely applicable* and common to many objects of study, i.e., generalizable knowledge and disciplined intellectual processes usable in different learning situations.

An implication of Dr. Levi's thesis is that the common training he referred to ought to be shared by professionals and nonprofessionals alike, and that the liberal arts constitute the best preprofessional preparation. This is not a new notion, of course, but if it has never been implemented

to anyone's satisfaction, some reasons must be sought in the demise of the liberal arts ideal. However, a much larger implication may be that a good professional education, as he would define it, is in the present circumstances of higher education alluded to above, also the best general education.

III.

Having agreed that the re-creation of the liberal arts via professional education is an idea well worth exploring, let me try to link the argument to the boundary problem discussed earlier.

It may be that professional schools, for reasons rooted in the multiple effects of rapid social change on the functioning of institutions and organizations manned by their trainees, and in the obsolescence of specialized knowledge, are moving toward a concept of a generalist-specialist. Prior to full-time professional programs, the generalist component would be well-served by a revitalized and updated liberal arts preparation. But as an integral part of professional programs, a generalist component might be anchored to a broader and deeper grasp of the institutional realm graduates will practice in, *and* to the larger societal context within which institutions and organizations have their meaning and impact. In the wake of unprecedented social change have come value conflicts, uncertainties, and new problems which challenge prescribed roles, undermine assumptions about established patterns of behavior, disturb expert-client relationships, and obscure the relationship between knowledge and action. One result of all this may be to call into question prevailing norms of vocational specialization.

If one accepts, tentatively, the possible need for a *general* education of professionals, then there is additional reason for assuming that professional schools have a strong vested interest in putting together in coherent fashion the fragments and packages of knowledge which are presently distributed on a departmental or disciplinary basis. As professional schools face inward in searching for the building blocks of a generalist-oriented curriculum, they find a limited and somewhat motley array. As professional schools face outward in their capacity as specialized teachers, researchers, and critics, they often find problems and situations to which the university's capabilities are ill-fitted if indeed they fit at all. Both interfaces imply extensive reorganization of knowledge.

Given this inside/outside squeeze, I believe professional schools will find it necessary to devote increasing resources to the task of integrating the contributions of various disciplines according to their own needs. I doubt very much that relevant nonprofessional divisions of the university can or will be motivated quickly enough or on a sufficient scale to be of substantial help.

This situation is linked to the boundary issue raised at the beginning of the Symposium. As things now stand, we do not know exactly what the university can best contribute to the larger community simply because the latter's storehouse of knowledge and capabilities have not been systematically evaluated, re-packaged, translated, or otherwise rendered usable under conditions which combine applicability and conformance to its intellectual standards. It would be foolish to underestimate the difficulties inherent in an imposing mix of unresolved problems and significant choices. In a period of educational change and re-assessment, alternative strategies for relating the university to society more effectively are not yet specifiable, and there are things we need to know before intelligent policies can be formulated.

I suggest that professional schools be explicitly recognized as the most fruitful laboratory the university has for re-assessing the boundary problem. If, on the one hand, the university's integrity is at stake, and if, on the other hand, the university can neither escape nor control its operating environment, then the attendant dilemmas and conflicts ought to be examined on the university's own terms, i.e., by employing its own intellectual skills according to its own rules.

If the professional school faces in two directions might it then be conceived as a half-way house or as a clinical interface between the community and the values, resources and activities which uniquely define higher education? Professional education cannot (and in my judgment, should not) avoid either the conflicts or opportunities of its bridging location. There is nothing simple or easy in this position, particularly during a time of crisis. The mix referred to above embraces the nature and function of faculty research, the fit between preparation and future roles, situations, and problems professionals are likely to face, the blending of realism with formal learning, creative responses to the needs of practitioners (e.g., continuing education), ways of coping with the obsolescence of knowledge, and so on.

Instead of being a burden, these factors might be viewed as ingredients for systematic explorations and experiments with the boundary problem on behalf of the university as a whole.

INTRODUCTORY REMARKS AT SECOND SESSION

HARRY W. JONES

Let me begin this session by suggesting certain lines of continuity running from this afternoon's subject, "The Place of Professional Education in the Life of the University," to this evening's discussion of "The Teaching and Research Missions of the University Professional School."

A university, whatever else it wisely or unwisely undertakes to do, is an institution both for the education of students and for the advancement of knowledge. If the professional school is genuinely a part of the university, it has, among its other tasks, these two: the transmission of professional knowledge to future practitioners and the advancement of that knowledge by inquiry and research. The teaching and research missions are, I think, far more complementary than antagonistic, but the problem of maintaining a proper balance between them is not an easy one.

We have been hearing much these days about "publish or perish" and about the supposed "flight from teaching" of unduly research-minded professors. Have the university professional schools exalted research over teaching, as their young critics and certain newspaper experts are wont to charge? My own view, provisional and so subject to counter-persuasion this evening by Dean Kirby, Professor Smigel and Dr. Cramblett, is that the facts are quite the other way. The professional schools I know most about, the law schools, seem to me to have been far more faithful in the discharge of their teaching than of their research responsibilities.

This law school subordination of inquiry to teaching can best be seen in the choice of research subjects by legal scholars generally. "If it can't be taught in the classroom, it isn't worth researching." This is the familiar jibe at us, and there is hard truth in it. American legal scholars have produced what may be the finest teaching materials—largely casebooks and law review articles—available anywhere in university education here or abroad, but our record in more basic research on the functioning and efficacy of law in society is far short of what it should be. We have much to do to establish effective patterns of interdisciplinary collaboration between law teachers and scholars elsewhere in the university, and we have barely made a start at what may be the most durably effective of all instructional techniques, the utilization of students as learner-participants in the carrying on of law-related scientific research.

The emphasis on research may be too dominant elsewhere in our universities, although I really do not believe that for a moment, but the research tradition is insufficiently established in our law schools. This neglect of basic law-related inquiry can have serious consequences. If a professional school has no research tradition, it is likely to be transmitting the

knowledge and the problems of yesterday to the practitioners of today and tomorrow. And, to view the matter more broadly, where else but to the universities are we to look for research of genuinely scholarly quality? Profession-centered research has tended, at least so far, to be second rate as compared to university-based scholarship; this, I suspect, because research at a non-teaching institution has to be done by men who lack the stimulation of fresh student criticism. Edwin Patterson used to say, "If you can't explain your research hypothesis to a good student, it isn't worth much," and Patterson's statement records the experience of many of us. To paraphrase Daniel Webster's toast, "Teaching and research, one and inseparable." Or so it is for the university professional school.

Our principal speaker for tonight's discussion of the teaching and research missions of the university professional school is the Dean of the Ohio State University College of Law, James C. Kirby, Jr.

THE TEACHING AND RESEARCH MISSIONS OF THE UNIVERSITY PROFESSIONAL SCHOOL

JAMES C. KIRBY, JR.*

In a commendable effort to look beyond the limits of the College of Law in our University's Centennial celebration, the architects of this program wisely chose the general subject of professional education, not merely the schooling of lawyers. However, in stating my topic they created a task beyond the capability of this particular legal educator—one who is more lawyer than educator by personal background and who knows little about other professional schools.

My first difficulty in this regard is embarrassingly basic. It requires a full confrontation with the question: "What Is a Profession?" This must be the threshold inquiry in any general discussion of professional education. Unfortunately, the term "professional" is quite imprecise. It is used to describe careers from athletics to politics. One narrowing definition was furnished by a great legal educator, Dean Roscoe Pound. It is simply: "A group pursuing a learned art as a common calling in the spirit of a public service."[1] Abraham Flexner, a pioneer in modern medical education, supplied a more complex definition, finding six criteria to be characteristics of a profession. They are:

> (1) intellectual operations coupled with large individual responsibilities, (2) raw materials drawn from science and learning, (3) practical application, (4) an educationally communicable technique, (5) tendency toward self-organization, and (6) increasingly altruistic motivation.[2]

Both definitions have merit but neither is adequate to identify those professions whose education can be considered together under my topic. Theology satisfies most any definition and stands with law and medicine as one of the three ancient learned professions, but it seems to have too little in common with them for all three to be treated in this paper.

However, there is one common element among certain professional schools which makes them appropriate for combined analysis. In some schools the University both confers a degree and satisfies a licensing requirement of an organized occupational group which controls access to its own ranks. Thus, we can pragmatically limit our inquiry to problems of institutions who train in the health services, architecture, engineering, education, and law. Each supplies the manpower needs of an organized, monopolistic profession and each is accountable to its respective professional community as well as to higher academic authority. This is the single most im-

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1 R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5-6 (1953).

2 Flexner, *Is Social Work a Profession?*, 1 SCHOOL AND SOCIETY 904 (1915).

portant distinguishing characteristic of professional education as I have chosen to define it.

This introductory note serves two purposes. First, it gives early emphasis to the responsibility of the professional school to its profession, a concept which pervades both its teaching and research missions. Second, this narrowing of focus reduces a huge subject to manageable proportions. Speaking from the vantage point of the law school, we can concentrate on those aspects of professional education which raise problems common to law schools and to other schools similarly related to an organized profession.

Research and teaching should be viewed as a single unitary subject, not as two separate and independent functions. Indeed, one could add the third mission of the law school, public service, with no real change in substantive content. After this somewhat simplistic analysis, the subject becomes exceedingly complex, and even frustrating, because there is so little agreement among legal educators on the ultimate goals served by any of these three functions of legal education in today's society. In this respect we probably differ considerably from educators of the other professions.

Regardless of how the mission of a law school is verbalized, it must find its tangible embodiment in the work of that unique human being called a law teacher. By contrast to his medical counterpart, the professional teacher is a relatively recent arrival in law. Although compulsory law schools may be traced to those of the Roman Empire in the Fifth Century,[3] the schooling of lawyers by persons making careers of legal education is largely a development of the last century.

The medical profession's Hippocratic oath points up both the earlier origins of medical teachers and another sharp historical difference between educators of lawyers and doctors. There is not yet anything in the history of the law teacher to compare with the first obligation of this famous oath, which from ancient times has guided the ethics of medical practitioners. The new physician swore by Apollo:

> To regard my teacher in this art as equal to my parents; to make him partner in my livelihood, and when he is in need of money to share mine with him; to consider his offspring equal to my brothers; to teach them this art, if they require to learn it, without fee or indenture; and to impart precept, oral instructure, and all the other learning, to my sons, to the sons of my teacher, and to pupils who have signed the indenture and sworn obedience to the physicians' law, but to none other.[4]

There is no evidence that law teachers as a group have ever enjoyed—or are likely to enjoy—comparable devotion from their students. The ex-

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[3] S. ELIOTT, OPPORTUNITIES IN A LAW CAREER 12 (1969).

[4] Fitts and Fitts, *Ethical Standards of the Medical Profession*, 279 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 29 (1955).

planation for this is not demeaning, but it is too complex to be developed here.

Another historical note is much more generous to law teachers. There is one legal educator whose personal impact on America's history is equalled by few men of any profession. He was an Englishman named William Blackstone, the forerunner of our modern law teacher. Despairing of the quality of the training of British lawyers by the practicing profession, Blackstone delivered at Oxford a series of masterful lectures which were published in 1765-69 under the title "Commentaries on the Laws of England." Blackstone thus furnished the basic textbook for the schooling of American lawyers for almost a century, including the self-education of young Abraham Lincoln.[5]

Blackstone's work still stands as the paramount example of the influence which a legal scholar can have on public institutions. The architects of American freedom were greatly influenced by this conservative English scholar and Blackstonian lawyers engineered the wholesale transplant of the English common law to this country—an event of enormous historical importance. The American revolution had been the last desperate effort of English subjects abroad to obtain their constitutional rights under their homeland's fundamental law.[6] The English common law and basic civil rights traceable to Magna Charta were the foundation stones of the new nation's legal system. Law teacher Blackstone is entitled to great credit for the conservative quality of this new system and its contrast to the radical convulsions which were to accompany the French Revolution. As historian Daniel Boorstin has noted, it is remarkable that "such a work as the *Commentaries* and the institutions which it expounded could continue to dominate the legal thinking of a people who had rebelled against the country of its origin."[7]

Our first American law teacher was Blackstonian George Wythe, Thomas Jefferson's mentor, who assumed a chair of law at the College of William and Mary in 1779. In 1817 the first full-fledged school of law appeared at Harvard. It was late in the 19th Century, however, before university legal education began to assume a dominant role in the training of the profession.

In addition to the founding of The Ohio State University in 1870, there was another event that year of historical importance to professional education. It was also in 1870 that one Christopher Columbus Langdell was hired from law practice in New York to be a professor of law and to bear the new title of dean of the Harvard Law School. Until then law offices were much more important than law schools as educators of the profession,

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[5] C. SANDBURG, ABRAHAM LINCOLN, THE PRAIRIE YEARS AND THE WAR YEARS 33 (1954).
[6] S. MORISON, THE OXFORD HISTORY OF THE AMERICAN PEOPLE 207, 216-19 (1965).
[7] D. BOORSTIN, THE GENIUS OF AMERICAN POLITICS 88 (1953).

and the few law schools in business offered little more than scattered lectures by practicing lawyers and judges. Langdell began a revolution by hiring full-time professors. He also launched a first-year compulsory curriculum, which still survives to a surprising extent, and soon unveiled the case method of teaching. In 1871 he introduced our first casebook, a collection of judicial decisions on contracts.[8]

Langdell's case method, accompanied by the Socratic technique of teaching, still pervades legal education. The extent to which this should continue into a second century is at the core of any assessment of the legal education of 1970. We shall return to the subject.

One who seeks accolades for today's law teaching may turn to the 1967 book *"The Lawyers"* by Martin Mayer, which devotes one of its better chapters to the law schools.[9] Mayer surveyed legal education on a national basis and concludes: "What the law professors offer in their courses is the best quality of education in America. . . ."[10] He described law school teaching on the average as being "more intense and more intelligent teaching than is offered in any other variety of academic institution in the United States."[11]

Unfortunately, critics of legal education can cite more persuasive authorities. The October 1969 *American Bar Association Coordinator and Public Relations Bulletin* carried as its front-page headline "Concern Rises over Quality of Legal Education."[12] The item was based largely on an address at the 1968 ABA Convention by Chief Justice Warren E. Burger, in which he accused law schools of failing to meet their basic duty to provide society with "people-oriented and problem-oriented counsellors and advocates to meet the broad social needs of their changing world." This resulted, said the Chief Justice, not from deficiencies of law graduates in their knowledge of law but the fact that they receive "little, if any, training in dealing with facts or people—the stuff of which cases are made."[13]

There is really no disagreement between author Mayer and the Chief Justice. Note that Mayer applauds only the quality of education in "what the law teachers offer in their courses."[14] He gives us low marks quantitatively for not doing more and finds the main problem of today's law school to be that ". . . startlingly little is known systematically about the real world of the lawyer, and even less . . . about the purposes the society wishes the lawyer to serve . . . ."[15]

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[8] C. LANGDELL, A. SELECTION OF CASES ON THE LAW OF CONTRACTS (1871).

[9] M. MAYER, THE LAWYERS 71-118 (1967).

[10] *Id.* at 118.

[11] *Id.* at 74.

[12] *Concern Rises Over Quality of Legal Education*, 17 AMERICAN BAR ASSOCIATION COORDINATOR AND PUBLIC RELATIONS BULLETIN, No. 10 (1969).

[13] *Id.*

[14] M. MAYER, *supra* note 6, at 118.

[15] *Id.*

Few will fully defend either the content or method of current law school programs. Dissatisfaction from the practicing profession, judges, students, and increasing numbers of law teachers have put legal education on the defensive. Along with most other legal institutions, it is in serious trouble. However, unlike some legal institutions, it is undergoing rigorous self-examination which holds considerable promise for major reform.

A Ford Foundation grant to the Association of American Law Schools has made possible a major study which is being conducted by a committee headed by Professor Paul Carrington of Michigan. We hopefully await that committee's report but, in the meantime, are engaging in much introspective self-study at every law school.

Most law teachers can agree on several points. First, legal education is too rigid, offering little latitude for tailoring students' course selection to individual interests and career goals. Students all do exactly the same thing in the first year and pretty much the same kind of things in the second and third year. This is true within law schools and from school to school, a uniformity due largely to the success and spread of Langdell's methodology.

Second, legal education is too narrow. Even in third year offerings which depart from the mold of large classes taught by the case method we do not sufficiently exploit the knowledge of other disciplines or opportunities for field and clinical experiences. Our comfort with the case method keeps us locked in various extensions of the law library. Non-legal and non-bookish resources are little used.

Thirdly, the total experience is too repetitious. The third year contains so little that is new and fresh that we must concede that it is a crashing bore to many students. The bright ones may be ready to practice after two years. We admit that we cannot teach all the law and the elective feature of the third year curriculum justifiably leads students to question the need for *any* particular course in it.

Curricular reform, or at least change, is advancing perceptibly, but not coherently or in accordance with anything approaching a consensus on goals. In keeping with the trend towards student voluntarism, most second and third year courses are elective. This may represent a nod towards specialization in large schools with enough teachers to offer a variety of advanced specialty courses. There is also a trend towards more elective offerings in newly developing subjects related to international relations, urbanology, the environment and civil rights. For instance last year's elective curriculum at a major eastern law school[16] included: Police Administration, Economic Development for the Poor, United Nations Law, First Amendment Freedoms, The Great Rights in the New States, Health Services in the Urban Society, Juvenile Delinquency, Land Use Planning,

[16] New York University.

Environmental Control, Law of Political Activity, Law of Urban Affairs, Civil Disobedience, Private Law Problems of the Poor, Public Education, Welfare and Public Assistance, Urban Housing, and Social Justice.

It is safe to say that such courses are added primarily because individual teachers want to pursue them and there is some current evidence of student interest. They do not result from new institutional commitments to any particular principles other than faculty-student voluntarism around the fringes of the curriculum. It is also safe to say there is deep dissatisfaction with this and every other law school curriculum in the country. Hopefully the AALS study may give stalemated, self-conscious law faculties the outside help they need to make real surgical changes.

New methods of classroom teaching, supplementing, not replacing the case method, are also an observable development in most schools. The basic materials are rarely called casebooks anymore. They typically are labeled "cases, materials, and problems," combining reported judicial decisions, discussion problems, trial transcripts, legislative hearings and reports, law review excerpts, and drafting exercises. This is the best evidence of a declining reliance on the casebook, particularly after the first year fundamental courses.

One particularly exciting idea is beginning to emerge from curricular reform: We should be able to do more for a student in three years than did the law school of 25 years ago. With four years of pre-law training and rising Law School Admission scores, our students unquestionably have greater capabilities. By reducing the compulsory curriculum, we have both conceded that most course offerings are not indispensable and have freed students for more variety in individual programs. It may well be that we can achieve what we view as our minimal general task in two-thirds of the time previously used. Then, the third year can be used for something totally different—innovations which are specifically designed to remedy some or all the quantitative shortcomings now attributed to legal education.

In a sense we may be reaching the point of medical educators when they divided studies into preclinical or basic science years and clinical years. They have since moved further, at least here at OSU, and provide what they call "an amalgamation of basic sciences as a method of systematic clinical problem solving."[17] If supporters of clinical programs for legal education have their way, we might initially devote the third year of law to such work and later follow our medical brethren into an amalgamation of methods in which clinical experiences pervade the entire law course.

If one-third of a student's law school career becomes available for something new, clinical work is not the only alternative. Determining how

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[17] Meiling, *A New Era In Medical Education*, 11 THE OHIO STATE UNIVERSITY COLLEGE OF MEDICINE JOURNAL 14 (1970).

best to use such a dramatic new resource will compel, for the first time, an institutional definition of purpose—the development of a coherent underlying philosophy of legal education.

The main difficulty is that we train lawyers for so many different kinds of careers, ranging from highly specialized work on Wall Street to general practice in county seats and from solo practice to huge firms. Government, corporate, and educational careers claim almost one-third of our graduates.

One expert has suggested that law schools should vary their curricula according to whether they are primarily supplying manpower for small or large firms. He places the top 15 or 20 law schools in the latter category.[18] As the dean of a law school which supplies graduates to both large and small firms and serves both the countryside and the metropolis, I can see serious troubles if we must elect either category. It may be workable for some schools, but not for Ohio State and much can be said for a pluralistic professional mission such as ours.

Another suggested solution to the problem of institutional mission was contained in an announcement made recently by a large Northeastern university which has no law school but enjoyed a short tenure under a lawyer as its president. It proposed to start a new kind of law school designed for policy makers rather than practitioners. The implicit notion in this—that sensitivity to public policy is foreign to the regular training of lawyers—is another view I cannot accept. Furthermore, the proposal of a policy-law school may overlook the fundamental skills which are essential in anyone who would make public policy. How many good causes have been lost because they were entrusted to proponents who were weak in advocacy? Lawyers who would make public policy should first be well trained in the basics of legal analysis and the marshaling and presentation of facts and arguments. They need much the same minimal qualifications as do private practitioners. The great success of lawyers in attaining and holding public office in this country demonstrates that we are achieving some success in producing policy-makers. It is my guess that the chief reasons lie in their talents in advocacy and problem analysis and their sense of relevance which inevitably flows from legal training.

Nonetheless, we are not doing enough, and we should be concerned with the quality of much of the public policy now being made by the lawyers who dominate governmental public office in this country. The legal mind frequently is accused of being inadequate to broad, complex public policy issues, and methods of legal education may be partly responsible. A perceptive staff member of the United Nations recently commented on

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18 Cavers, *Legal Education in Forward-Looking Perspective*, LAW IN A CHANGING AMERICA 142 (G. Hazard ed. 1968).

the shortcomings of lawyers in dealing with complex issues of international problems, saying:

> Lawyers, by and large, are not in the intellectual vanguard. . . . At best, they are the present day classicists, skilled in verbal analysis, in structured argumentation, in close reading of documents. . . . For the most part, their emphasis is on words, on abstractions, on a highly limited slice of the real world. They prefer to operate in a tidy world . . . to take their facts in restricted predigested doses and to keep their distance from the new techniques and concepts of economics, social science, management and the like. . . . [T]he great bulk of law school graduates, . . . , manifest an intellectual provincialism that hardly qualifies them to deal with the kind of world I have referred to . . . .[19]

This criticism is heard frequently from non-lawyers in the Humanities and Social Sciences. Some feel that lawyers are one dimensional and, indeed, barely literate outside their own spheres. This might be tolerable to the educators of such lawyers if we were only satisfying them—our brothers in the practice—but, as Chief Justice Burger indicated, we are under fire from that source too. At the 1968 American Assembly on "Law In a Changing America," a prominent practicing lawyer stated views surprisingly close to those of our non-lawyer critics, saying:

> The preoccupation of legal education with matters of doctrine and formal analysis is a product of the case method of study, which accentuates the development of law at the appellate level. This method treats pertinent facts and conditions as given by hypothesis. It tends to ignore, and even to condition the law student against concern for, the correlation of legal concepts with the marshalling of evidence and the interactions of people, a process which ultimately commands much of the practicing lawyer's time and attention. This is compounded by the fact that legal education is induced by something akin to artificial insemination, through the efforts of teachers who are generally unfamiliar with the workaday role of the practitioner.

Then, turning this to a sort of complement, he added a softening qualification:

> This statement should not be taken as disparagement of law teachers. By and large, their want of appreciation of the true demands upon the "average" lawyer results from the fortunate fact that the teachers are not "average." To the extent that they have practiced, their manifest intelligence, talents and application have usually earned for them select positions, removed from the general practice of the law and the persons and problems which traffic there.[20]

To some extent, this cross-fire can be rationalized. Law teachers work a tense middle ground between academia and the profession. If we do our

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[19] Schachter, *Professional Education In The Public Interest—Remarks*, 1966-II PROCEEDINGS—ASSOCIATION OF AMERICAN LAW SCHOOLS 159 (pt. 2).

[20] Nahstoll, *Regulating Professional Qualification*, LAW IN A CHANGING AMERICA 129-30 (G. Hazard ed. 1968).

job well, we must condition ourselves to complaints from within the University that we are oriented too much to the profession and contradictory complaints from the practicing profession itself that we are too much turned inward toward academia. If this ever changes we will undoubtedly have moved too far in one direction or the other, but it does tend to make the teaching of a profession a rather lonely business.

Nonetheless, we cannot ignore sympathetic criticism based upon what we know to be true. Attackers of the case method's doctrine-oriented teaching join a succession of realists and pragmatists in an intellectual line which can be traced to Roscoe Pound. In 1910 he coined a term still used in this debate when he published *"Law In Books and Law In Action."* From Justice Oliver Wendell Holmes came the famous dictum that "The life of the law is not logic but experience,"[21] a truth totally at odds with Langdellian methodology.

In the 1930's, a school of legal realists, led by Karl Llewellyn and Jerome Frank, moved directly against traditional law teaching. Llewellyn urged the emersion of students in the concrete details of law work, attacking cases as they appear to lawyers who handle them. He also showed how law teachers can lead the way in law reform by going outside the lawyer's realm and studying the marketplaces where our commercial laws function.

There is a brilliant student note on this subject in a recent issue of the Yale Law Journal.[22] It does much to confirm the case for continuing the law journals. The schools of legal realism and pragmatism are traced from Pound to the present and a conclusion is reached which is critical of these would-be reformers:

> In their work on the legal process, the realists focused on empirical investigation and the conceptual framework for such investigation: behavior studies, "squaring" doctrine against facts, "pragmatic statesmanship," judicial fact-finding. Some of them, particularly Frank and Llewellyn, were aware that something larger than empirical method was needed to supply a professional model for making, practicing, and studying law, and that this model or paradigm involved values, concepts, and theories as well as contact with "reality." But they thought very little about the probable connections between the level of finding out "how it works" and the level of constructing a paradigm. Similarly, in education they realized that a new "method" of interpreting cases opened up large questions about how to study society and the legal system. But they tended to evade these questions through vague ideals of craft addressed primarily to pragmatic technique, and not directly to the difficult issues of what values the profession should support, how manpower should be allocated and paid for, and what kinds of intellectual, material, and political developments were required to realize their social and educational ideals.[23]

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21 O. HOLMES, THE COMMON LAW 1 (M. Howe ed. 1963).

22 Note, *Legal Theory and Legal Education*, 79 YALE L.J. 1153 (1970).

23 *Id.* at 1172.

In other words, the pragmatists were not pragmatic. They stopped short of the difficult task of specifying responsive law school programs. This is a valid point and a provocative way of identifying the unfinished business of legal education as a whole. It fails to recognize, however, that the larger battle fought by the pragmatists has finally been won. Few will deny that the doctrine-oriented model built around the case method is obsolete. Students hunger for contact with the real world. Teachers can easily hold student attention by injecting practical experiences and actual, rather than hypothetical, problems. Living, unsolved problems and future solutions, as opposed to cold cases revealing past solutions, are the new order. But the next stage, implementation of this triumphant pragmatism, is a massive task and the debate has just begun on what should be done by way of concrete curricular change.

There is general agreement that students still should receive a substantial initial experience in rigorous case analysis and some minimum accumulation of substantive rules of law. The first-year curriculum seems a safe bet to remain in the hands of strong case and Socratic method-men teaching the basic subjects. Beyond this there is wholesale disagreement on clinical programs, specialization, individual research, draftsmanship, skills development and other means of enriching and expanding the law students' individual educational experiences.

Dean Goldstein of Yale has concluded that specialization is the answer[24] and I agree with a portion of his reasoning. It is no longer possible for us to claim that we are turning out true general practitioners. Just as no M.D. can now minister to all the ills of his patients, no J.D. can serve as a general practitioner for all the legal problems of the client. Specialization is a fact of life in the practice. But, just because the law schools can no longer turn out true generalists, it does not follow that we can now turn out true specialists. Specialization results generally from specialized experience in the practice or graduate education in law. I doubt seriously that the typical law school, or even the superior law school of typical size, can multiply its offerings to the point that any wide range of specialized practitioners such as tax, patent, corporate, criminal, domestic, labor, civil rights, or poverty lawyers can be produced in a three-year program. This may be one way to use that possible released third year that I mentioned, but law school resources will not be equal to such rich offerings in the foreseeable future. However, we should be able to offer more specialization than is now done. Making it possible for third-year students to do substantially more in-depth work in areas of personal interest through supervised research, writing, clinical work and seminars is a real possibility.

Here we collide with a stark reality. Such programs are impossible

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[24] Goldstein, *The Unfulfilled Promise of Legal Education*, LAW IN A CHANGING AMERICA 164-66 (G. Hazard ed. 1968).

with current teacher-student ratios of 20 or 25 to one. The common ingredient in all proposals for reform is to shift away from formal classroom instruction in large groups. More individualized and small-unit learning experiences are the basis of an emerging consensus. These can take the form of smaller sections, additional seminars, individual writing and research, and individual participation in problem-solving experiences, both in the classroom and in the field. All these innovations require increased faculty manpower. Thus, a priority item for law schools must be to expand faculties at a much greater rate than student enrollment. This is a difficult assignment in times of restricted budgets for higher education, but it is the duty of all those who believe in quality legal education to begin now in asserting the primacy of reduced student-teacher ratios.

Exactly how this additional manpower will be used must be subject to experimentation and diversification. Some of my colleagues strongly feel that small first-year sections should have first claim on additional faculty resources. Others feel that the small unit experience is more valuable in seminars chosen after the student has developed special interests of his own. Those who support clinical programs are unanimous in agreement that close faculty supervision is essential and would give this priority in faculty expansion. Supervised writing and advocacy is another possibility. But it is totally unrealistic to expect faculties large enough to offer all such programs. At this school and others, difficult decisions are now being made on priorities among such changes.

One avenue to enriching the curriculum and also of satisfying some of our public service obligations, is to explore new research avenues for both students and faculty. This aspect of my subject reminds me of Thomas Reed Powell's famous definition of the legal mind. He said that one has such a mind if he thinks he can "think about a thing inextricably attached to something else without thinking about the thing to which it is attached."[25] Under Langdell's views of the library, the law books hold all the things about which the lawyer need be taught to think. The library is our only laboratory, despite its sterile isolation from so many of the human problems of the world outside.

Our library research is typically the matching up of legal precedents and deriving rules and exceptions from analysis and synthesis of lines of cases. We have been highly successful both in teaching such research and in providing the profession with adequate publications to find the law.

It is research in the things to which these materials are attached—non-doctrinal inquiry, outside the library, into the society in which the law operates and the impact of law upon human behavior—which too many law teachers have resisted. The law-in-action which Pound contrasted to law-in-books is still the frontier of legal research.

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[25] T. ARNOLD, THE SYMBOLS OF GOVERNMENT 101 (1937).

Our preoccupation with doctrinal inquiry in research has caused many of our academic colleagues in other disciplines to accuse us of having no real research function. Many of us have had experiences comparable to that recounted by Harvard law professor David Cavers. A distinguished social scientist on their faculty once said to him "You people in the law school aren't interested in research."[26] Cavers denied this, but conceded that some temporary conditions had cut down his colleagues' usual flow of contributions to the law reviews. Still unsatisfied, the critic retorted "Oh, I know you Law School people write for the law reviews, but you aren't interested in research. You aren't interested in adding to knowledge."[27]

A document recently issued here at OSU by our Office of Research and Sponsored Programs could well be cited by such a critic. It is entitled "Facts on Sponsored Research at the Ohio State University"[28] and details how much more than $18,243,000 was spent last year on sponsored research programs totally within this University. Most went to engineering and physical sciences and the life sciences, but over 14% or $2,321,000 was spent in the social sciences. Yet, not a single penny is shown for a project in the College of Law. One must conclude that we legal researchers at Ohio State are hardly taking advantage of resources right at our door.

Do not be misled. There was sponsored research going on in the College of Law and next year some law projects will appear in the Research Foundation's report, but law teachers have largely passed up the contemporary grantsmanship, and they continue to makeshift with such modest supports as research quarters of leave, occasional summer grants and mild exploitation of student research aides and the projects of seminars and individual studies. There may be a hidden blessing in this. At least we don't have the problem of our medical brothers. They became accustomed to almost unlimited federal financial support, designed mainly to ease the physician shortage, and now face drastic financial problems as Congress sharply cuts back on this source. Nonetheless, our legal institutions might not be on the verge of total collapse if research in law had enjoyed 25 years of federal largesse comparable to that afforded medicine.

In all events, the low level of extramural research is a big part of the law schools' problems and law teachers are now ready and anxious to remedy this. One reason is the example of other disciplines, in particular the social sciences, which have made great strides in empirical studies of human behavior. These have a potential which lawyers can no longer ignore. Another reason is related to our students. The communications explosion, improved levels of pre-legal education and a generation of "tell

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[26] Cavers, Legal Research 1, March 22, 1957 (unpublished materials for seminar in Legal Education at Columbia Law School; copy in possession of author.)

[27] *Id.*

[28] Office of Research and Sponsored Programs, Facts on Sponsored Research At The Ohio State University—Preliminary, May 14, 1970.

it as it is" young people compel us to go behind the old fictions and presumptions of our rules and cases and to measure theory and substance against real practice and actualities of human behavior. Differences in theory and practice are no longer tenable. If something is not good practice, it is not good theory.

A final reason is the enormous pressure upon legal institutions in present day society. Bringing legal instruments to bear upon such problems as racism, pollution, crime, dissent, and the alienation of youth and answering the charges of sham, hypocrisy and repression levied against the law compel us to get out of the library and to measure our legal norms against reality.

This is not as radical for law scholars as some of our critics claim. Call it empirical, factual, or field research, it is not totally alien to legal methodology. Consider the "Brandeis Brief" by which lawyer Louis Brandeis proved to the Supreme Court in 1908 the actual effects of unregulated hours of labor for women.[29] His intellectual heir, Felix Frankfurter, used the same technique as an advocate in 1919 to get the court to sustain a state law setting maximum hours in general.[30] Then, as a scholar and teacher, Frankfurter pierced the veil around strike-breaking labor injunctions. His published research[31] was a direct cause of Congress' enactment of the Norris-LaGuardia Act limiting the injunctive powers of federal courts.

There is an acute need for more of such research in the labor law field today. I once heard a federal judge describe labor law as a "dense jungle through which lawyers and judges hack their way with dull machetes." Those of us who work in this field must concede some truth to this and, unfortunately, the law schools are doing little more than sharpening machetes for lawyers who will hack adversary paths through the jungle. Empirical research testing the presuppositions of national labor policy and measuring actual behavior of both labor and management against the norms of statutes and regulations is conspicuously rare.

Ironically, the crushing need for a new era in legal research comes at a time when university research is becoming suspect. A subcommittee of the Ohio Legislature which recently investigated campus disorders questioned the present scope of faculty research and recommended study of the extent to which research projects "may unduly limit the availability of faculty for teaching duties."[32]

The committee missed the main function of research and the basis of the publish-or-perish theory. Productive research is essential to good teaching; and writing is the best self-discipline to assure that research is pro-

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[29] Muller v. Oregon, 208 U.S. 412 (1908).

[30] Bunting v. Oregon, 243 U.S. 426 (1917).

[31] F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION (1930).

[32] THE SELECT COMMITTEE TO INVESTIGATE CAMPUS DISTURBANCES, 108TH OHIO GENERAL ASSEMBLY, INTERIM REPORT 16 (1970).

ductively organized, analyzed and preserved. A scholar who does not write risks that he may stop reading and investigating. If so, his vitality as a teacher is ended.

But this is not the only justification for research in law schools. Research is the bridge across the gaps of reality we discussed earlier, the means of perfecting the unfinished business of legal realism. The new scholarship must furnish for all areas of law—from the policeman on the beat and discretion of bureaucratic administrators to the highest legislative and judicial decision-making—a critical, skeptical scrutiny of the sort which lays bare their faults and leads to responsive reform.

In a recent article by Jean and Edgar Cahn, two of the new breed of public interest lawyers, contemporary law schools were severely criticized on the customary grounds as well as some new ones.[33] A particularly provocative comment was directed at legal clinics. They cautioned against clinical responses to student demands if such programs are to become manifestations of what they call "the self-conscious posturing, the anti-intellectualism and the uncritical demand for involvement that characterizes much of the current revolt against traditional legal education."[34] Then, describing the typical clinical program as one largely concerned with providing student legal services to the poor and thereby possibly making the student more competent as a practitioner while also satisfying his demand for relevance, they issued this challenge to clinical undertakings:

> Clinical programs must not be permitted to degenerate into a grandiose abdication of responsibility whereby the law school simply abandons the student during the third year and leaves him largely to his own devices under the guise of affording him "practical experience." It must become a joint venture in discovery for the academic community where undigested chunks of reality are subjected to the most highly disciplined form of intellectual scrutiny.[35]

Herein lies the key to completing the unfinished work of the legal realists in overhauling the law school curriculum. Bringing undigested reality into true legal laboratories and forging a co-partnership of teachers, students, practitioners and interdisciplinary workers in a process of modernizing the law. A university law school located in an urban and governmental center, such as this one, should be a law center, of the sort envisioned by Arthur T. Vanderbilt when he spoke at the dedication of the new N.Y.U. law center building in 1951. Vanderbilt called upon lawyers, judges, legislators, law teachers, and concerned non-lawyers to join in cooperative research efforts to adapt our laws to new needs and to restudy

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[33] Cahn & Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970).

[34] *Id.* at 1029.

[35] *Id.* at 1030.

legal institutions in terms of values which enable every person to realize his maximum potential as a human being.[36]

On another local historical note, I find that interdisciplinary efforts and field research are both rooted deep in the history of this College of Law. In the bulletin for the 1894-95 academic year of the infant School of Law of The Ohio State University, the virtues of a university law school were extolled in a statement quoted from the committee which had recommended establishment of the school:

> The new questions growing out of the developments of science and the inventions of the age which are coming before the lawyers for solution, would seem to impose upon them a certain amount of scientific attainment. It follows that the best place to locate a Law College would be in connection with a University where science was extensively taught, and where law students could avail themselves of the benefits of scientific lectures—in short, where laboratories and all the philosophical instruments and the instrumentalities have been provided for the teaching of science, its illustration and demonstration.[37]

Then, on the same page the bulletin cited, somewhat contradictorily, the advantage of Columbus as a place for legal study because of its many courts. It quoted an anonymous clinical champion as saying:

> There is no place where law is learned so quickly and thoroughly as among lawyers. No teaching is so effective as the object lessons of the trial of cases in court.[38]

The apparent contradiction of these claims can be removed, but only by rich, versatile programs which include interaction with both academia and the practicing profession.

If in 1894 OSU had social science departments to match those in the physical sciences, one wonders if the law school would have made similar claims for their interdisciplinary possibilities. Probably not. Candor compels us to concede that too many lawyers still do not see much value for them in joint efforts with social scientists.

A national leader of the organized bar recently cautioned law schools against rumored "sociological excursions," urging us instead to stick to "basic legal instruction."[39] He clarified neither term and doubtless caused some listeners to fear some conjured vision of wholesale frolics and detours by law teachers into sensitivity training, Kinsey reports on the legal profession and inconclusive behavioral studies. If he meant this, there is no real cause for alarm; but if he meant that law teachers and students should con-

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[36] Vanderbilt, *The Mission Of A Law Center*, 27 N.Y.U. L. REV. 20, 29-30 (1952).

[37] OHIO STATE UNIVERSITY SCHOOL OF LAW ANNOUNCEMENT FOR 1894-95 at 2-3.

[38] *Id.* at 3.

[39] The Indianapolis Star, Oct. 17, 1970, at 21, col. 6 (L. Jaworski, President-elect of American Bar Association).

tinue to examine legal rules and procedures in ignorance of their social and economic contexts then we are in a state of fundamental disagreement.

Nonetheless, legal realists should not be discouraged by such resistance to empiricism. In the same speech he called for more pragmatism from law schools in exposing students to the real problems of the practicing lawyer. Given the occasion, I am confident that we can persuade most who share these views that consistency in the pragmatic approach requires that we also seek some of the practicalities of other aspects of the social order.

Proving that they may be closer to their professional brothers than to academia, many law teachers also tend to be suspicious of their fellow intellectuals laboring in other parts of the University's socio-economic vineyard. Legal philosopher Edmund Cahn, himself a rare blend of intuitive and doctrinal talents, may have spoken for many when he challenged the Supreme Court's reliance, in *Brown v. Board of Education*,[40] on a series of sociological studies purporting to show that segregation in education was harmful to black children. Professor Cahn, while approving the outcome of the case, had this to say of its use of sociological data:

> . . . I would not have the constitutional rights of Negroes—or of other Americans—rest on any such flimsy foundation as some of the scientific demonstrations in these records. . . . [S]ince the behavioral sciences are so very young, imprecise, and changeful, their findings have an uncertain expectancy of life. Today's sanguine asseveration may be cancelled by tomorrow's new revelation—or new technical fad.[41]

As Professor Harry Kalven has pointed out in disagreeing with Cahn, lawyers who are so expert in handling the imprecisions of the law should be able to become comfortable with the imprecisions of the social sciences.[42]

There is really no good reason for our traditional distrust of research patterned upon that of the behavioral researchers in the social sciences. Was not the Brandeis brief a study of factory worker behavior? And Frankfurter's work on labor injunctions a study of the behavior of judges and management lawyers?

Lawyers tend to dismiss social scientists' research as too often exposing behavior solely for its own sake and it is true that many are adept at posing problems without offering solutions. Lawyers pride themselves on problem-solving and view persons who advance no solutions, only problems, as themselves being parts of a larger problem and parts of no solution. Social scientists on the other hand tend to view lawyers as preoccupied with adjudicative solutions, applying formal rules to scatterings of circumstances and oblivious to whether a swirling chaos pervades society outside the narrow spheres of legal processes.

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[40] 347 U.S. 483 (1954).

[41] Cahn, *Jurisprudence*, 30 N.Y.U. L. REV. 150, 157-8, 167 (1955).

[42] Kalven, *The Quest for the Middle Range: Empirical Inquiry and Legal Policy, in* LAW IN A CHANGING AMERICA 65 (G. Hazard ed. 1968).

Both groups have some basis for such beliefs. The salient fact is that each has the strengths the other lacks. For systematic solutions to social problems lawyers and social scientists should perfectly complement each other. And they will—as soon as each concedes the other's utility in matters of their joint interest. Then they will communicate and work together as a matter of mutual self-interest.

In this direction, examples are accumulating of effective interdisciplinary work between law and the social sciences. Legal problem-solvers who are also truth seekers surely must concede the enormous potential of such efforts as fellow panelist Smigel's study of the behavior of Wall Street lawyers,[43] sociologist Carlin's studies of the actual effects of the canons of ethics upon behavior of lawyers in the practice,[44] the joint study of lawyer Kalven and sociologist Zeisel of the American jury,[45] anthropologist Bohannon's inquiry, done with a law student, into social consequences of divorce adjudication,[46] and Skolnick's study of police behavior based on participant observation.[47] The list is growing and a fresh major interdisciplinary development is the recent announcement of federal funding of a joint J.D. and Ph.D. in sociology program at Northwestern.

Our goal is simple: every law teacher a law reformer and all reform based upon the broadest possible research. It is surely possible for every law teacher to do more to acquaint himself with the problems faced by lawyers who are practicing in the areas in which he teaches, and to inject some of this realism into his teaching. It should be possible through released time and increased funds for field research and through wider faculty participation in clinical curricular offerings for every teacher to become a worker for modernization of the law he teaches. This is why many enter teaching—to work to improve legal institutions from the objective vantage of academia. Through publications, work on committees of the organized bar, testimony before legislative committees, occasional court representation and political acitivity, most law teachers are activists for one cause or another.

But what of their teaching, which is supposed to be enriched and stimulated by research into inadequacies of the law? Is this to be insulated from the activist and reformist attitudes of the involved teacher? Is this even possible, assuming its desirability *arguendo*? Some who are both dedicated teachers and dedicated law reformers persist in claiming that their classroom teaching is truly neutral—that they are not indoctrinating any one.

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[43] E. SMIGEL, WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? (1964).

[44] J. CARLIN, LAWYERS' ETHICS (1966).

[45] H. KALVEN & H. ZEISEL, THE AMERICAN JURY (1966).

[46] Bohannan, *Institutions of Divorce, Family, And The Law*, 1 LAW & SOC. REV. 81 (pt. 2, 1967).

[47] J. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY (1966).

I doubt this. Can teaching be neutral when it involves the conflicts of values and interests which inhere in most legal subjects? If this is possible, it is made so by the case method and Socratic technique. The teacher can artfully guide discussion until all issues which radiate from a case have been raised and all tenable positions have been presented. Then at a point of intellectual stalemate, he deftly turns to another case or another subject, leaving frustrated students with pens poised ready to write down a black letter rule of law which never emerges. This has the value of sensitizing students to the two-sided nature of legal questions and arming them to argue either side. At examination time two students who disagree can write equally well-reasoned answers to diametrically opposed conclusions and both receive maximum credit. This recognition of the ranges of reasonable difference is essential, but value-conscious students may become frustrated if the teacher never reveals personal commitment to any type of law reform. A national leader of law students has adopted one educator's criticism of the case method, describing it as tending "to keep teachers relatively invisible from their students, so that their social idealism and intellectual integrity is not always highly visible, especially under the anxious pressure of the classroom."[48]

If truly neutral teaching were the students' sole diet, it could produce students with warped and cynical views of law teachers, law school, and even the law itself. But I doubt that there are many teachers who do not, in some way, indoctrinate their students. Lawyers who want to teach generally have something to say, not merely a talent for presiding over inconclusive dialogue, and they find ways to say it.

I recently heard a more senior law teacher from a prominent law school claim that the procedural reforms of the 1960's resulted from effects of law school teaching of the 1930's upon graduates who ultimately attained high judicial posts in their middle and older years. There can be no doubt that the Uniform Commercial Code was aided greatly in its adoption by the fact that a generation of law students were indoctrinated to its virtues by their law teachers and then worked accordingly when they became legislators and leaders of the organized bar. The Code is also a monument to Professor Llewellyn, a legal realist who identified deficiencies in commercial law and devoted his energies to bringing about massive statutory reform. The earlier suggestion that Llewellyn was not truly pragmatic is belied by his major life's work.

Examples could be multiplied of law teachers identifying deficiencies in the law and proposing and working for solutions. If this be indoctrination, then much of it is being done by some of our best. The virtues of one man—one vote, jury trials, comparative negligence, no-fault insurance,

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[48] 1967-II PROCEEDINGS—ASSOCIATION OF AMERICAN LAW SCHOOLS 30 (statement credited to Andrew Watson, Professor of Law at University of Michigan by O. W. Corley, then President of the Law Student Division, American Bar Association).

easier divorce, pre-trial conferences, and many new doctrines have been advanced by teachers who related their work to law in action. In the law school of the law center which I have described it can be no other way.

Yet, there are limits. We hear much today of politicized universities and abuse of academic freedom by teachers propagandizing their students on controversial issues. The Ohio legislative subcommittee report previously mentioned tells of teachers who use the classroom to ridicule and degrade students holding political and social opinions opposed to their own. This is deplorable. No teacher should use the teacher-student relation to coerce actual or pretended conformity to his personal views.

This is manageable by men of good will, but admittedly difficult in politically-charged areas, of which there are an increasing number in the law school curriculum. Academic freedom protects a teacher in classroom discussion of controversial matters, so long as it is relevant to the subject matter of his course, but it is also his duty to maintain an atmosphere of objectivity. This is the approach of mature law teachers and holds the key to the apparent dilemma. We all know that it is quite easy for the law teacher to advance a view he prefers and still give a full airing to opposing views and leave the student free to choose. In my view, the benefits to be gained from law teachers manifesting their concern for advancement of the law, and imparting some of this concern to those entering the profession, clearly outweighs any speculative losses in classroom neutrality.

The research and teaching functions of the professional school blend together into a dual overall mission of training the profession and improving the institutions which the profession serves. The first task of a great law school is to turn out great lawyers—disciplined professionals who are conscious of their responsibility to the public and are eager to use their training to serve some causes.

The teachers who will contribute most of this—the really great ones—will not be those who steer gingerly around the tough questions, but those who confront and wrestle with them. Have no fear that such teaching risks narrow parochial indoctrination, for it is these teachers who are most conscious that they have no hammerlocks on certainty, no strangleholds on truth.[49]

Nonetheless, truth must be the goal. Harry Jones has made the point persuasively in his brief gem "Legal Inquiry and the Methods of Science."[50] He ascribes to most lawyers a basic belief that the real social utility of the rule of law is that "if social order and security are maintained, truth will be advanced and progress achieved."[51] He finds too that scientists who

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[49] See the remarks of Professor Grant Gilmore on his acceptance of the Trienniel Award of the Order of the Coif, *Id.* at 143-44.

[50] Jones, *Legal Inquiry and the Methods of Science*, LAW AND THE SOCIAL ROLE OF SCIENCE 120 (H. Jones ed. 1966).

[51] *Id.* at 130.

claim to be dedicated to the truth for its own sake, without concern for the consequences of their discoveries, really believe that the advancement of truth contributes in the long run to the greater fulfillment and happiness of mankind.

More specifically, the values in truth-seeking lead Professor Jones to some good advice for joint efforts of lawyers and social scientists:

> . . . [M]y only concern is that we lawyers tend to be unduly attentive to immediate applications of social science methodology—for example, what sociology can tell us today about today's problem of law administration—and to be insufficiently aware that fundamental knowledge comes, in the social sciences as in the natural sciences, only when truth is sought as an end in itself, without too much concern, at the stages of basic inquiry, with possible practical applications.[52]

Lawyers and others who are concerned about relevance may question whether problem-solvers should pursue truth as an end in itself, but Harry Jones is right. The relevance of a truth cannot be judged until it is fully discovered and any form of societal ignorance is a problem worth solving.

Another group may also quarrel with Jones on truth-seeking. Illusion and pretense protect us all from much discomfort. There are some truths many of us fear to learn—dark corners of society's imperfections where we doubt the wisdom of turning a bright light. Some reality may be too raw to be confronted by a fragile, delicately balanced social order. Too little has been written in serious social literature about the widespread preference for illusion over reality. One notable exception which has appealed to countless idealists, young and old, is in *Man of LaMancha*, the Broadway musical based on the life of Miguel Cervantes, the creator of Don Quixote. The theme of this classic of idealism is sounded in a speech delivered by Cervantes to fellow prisoners in a Spanish dungeon in 1597.

Cervantes first describes the human misery and suffering he has seen and speaks of the comrades who had died in his arms in battle and under the lash. He then says of those dying men:

> These were men who saw life as it is, yet they died despairing. No glory, no gallant last words . . . only their eyes filled with confusion, whimpering the question: 'Why?' I do not think they asked why they were dying, but why they had lived. When life itself seems lunatic, who knows where madness lies? Perhaps to be too practical is madness. To surrender dreams—this may be madness. To seek treasure where there is only trash. Too much sanity may be madness. And maddest of all, to see life as it is and not as it should be.[53]

Who is right, Jones or Cervantes? Dare we follow the quest for truth and face life as it really is? Yes. We do. And Jones is the greater idealist. Truth, life as it is, must be seen before life as it should be can be

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[52] *Id.* at 128.

[53] D. WASSERMAN, MAN OF LA MANCHA 60-61 (1966).

brought in. The difficulty with the other view is that no mortal knows enough to manage truth.

The implications of full dedication to truth-seeking in legal research may be deeper than all of us are prepared to accept. There are some ugly realities hidden behind the facades of our prisons, beneath the surface of law enforcement and criminal procedures, on picket lines, in the practice of law itself and in dozens of areas where the law has proceeded on untested assumptions or failed to check legal norms against reality.

If law is to be adequate to the enormous pressures about it, it must face up to all these. Mr. Justice Holmes once described our legal system as "an experiment, as all life is an experiment" and added, in a note of uncertainty: "Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge."[54]

We must dedicate both our research and our teaching to reducing the imperfections in human knowledge. As we do, we shall both increase the stakes and lower the odds in the daily wages of our collective salvation.

[54] Abrams v. United States, 250 U.S. 616 ,630 (1919) (Holmes, J., dissenting).

COMMENTS:

Discussant

ERWIN O. SMIGEL*

The professional schools are facing new demands on their curriculum arising from new as well as previously unfulfilled societal needs. Awakened awareness of their responsibilities in today's world presents the schools with a dilemna: some of the demands are of an enduring nature while others are ephemeral. To solve the dilemna, they must determine what society really needs of them and how to change and still avoid being caught in a whirlpool of fad and fashion. If the schools attempt to include every new "hot" subject, they may be saddled with faculty who become vestigial when the subject is found to be of short term significance. A professional school's primary obligation is to teach the basics of its profession, and, while what is thought to be basic changes from time to time, we will assume for the moment that the *basic* basics are known or can, with some self-searching, be known.

Dean Kirby's paper is sensitive to our times. He recognizes that some of the demands and needs of law students and some of the demands and needs of a new clientele—the blacks and the poor—must be met. Can these demands be satisfied along with the provision of a basic education? The answer, I think, is yes, since many of the demands involve simply the providing of services to meet the needs of a new clientele. If service to a public is a major factor in what a profession does, than enlargement of that service should improve the profession. The legal profession is already making changes in an effort to handle efficiently the tremendous increase of information necessary for a lawyer. Law is changing from the free profession (solo practitioner) to a team-organized profession (very specialized professionals working in groups). While the practice of law is changing the 19th century model of the free professional still prevails, and this makes the task more difficult.

I suggest that we dissect the word profession in order to study what is needed by a professional school to make its product—the graduate—more professional and so, more responsive to his world. This position assumes that one accepts the notion that the purpose of a profession is to be beneficial to society and that the profession has ideal standards. If this is so, then setting up and following guidelines should improve the profession. In any event, the dissection provides us with an orderly way of taking inventory and a framework for looking at the needs of the future.

Perhaps if we chose as our guide a definition which allows for both the 19th and 20th century models of a profession, we may see the current

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situation more clearly, Ernest Greenwood provides us with such a definition.[1] He states that a profession has five attributes: systematic theory, professional authority, community sanction, ethical codes, and professional culture. I should like to discuss these attributes separately.

Systematic Theory. Much of the law is based on systematic theory which is tied to formal education and the university. The theory underlies the skills which flow from a body of knowledge. One way to extend the systematic theory, in both law and medicine at least, would be to attach the theories of other disciplines to what is known in these professions. For example, in medicine, sociological and psychological theory would enable the physician to treat the patient more successfully. Medical schools might want to offer an advanced course in psychological dermatology, since many skin problems are said to be psychologically based. Courses in economics and the sociology of the poor should help lawyers deal with the legal problems of the poor. In family law or criminal law, courses might be added to the curriculum which combined sociological and legal theory. Law and medical schools cannot afford experts in all the behavioral sciences and the duplication of manpower which this suggests. They probably can, however, afford law professors who have knowledge of these sciences. Some professors can be trained in joint programs which are just beginning to appear in this country. Dean Kirby mentioned the Ph.D.-J.D. program started at Northwestern University. New York University has a Ph.D.-M.D. program and, in addition, a J.D.-M.A. program has been proposed in sociology, public and business administration. Both the shared use of departmentally based faculty and the professional schools employment of dual-trained personnel can be very important for the development and the broadening of systematic theory within the professions to include appropriate theories of the behavioral sciences.

Professional authority. The practitioner's authority over the client stems from the professional's special and extensive education and his license. The client who is usually ignorant about professional matters is almost forced to recognize the professional's competence and authority. To increase that authority, which in medicine, at least, physicians think of as important to treatment, students and faculty may have to engage in research. Therefore, the research mission Dean Kirby speaks of becomes especially meaningful when the researcher adds to knowledge which can be utilized for the benefit of the client. As this knowledge increases, the professional adds to his authority. A development of this kind may entail the use of research methods taught in other divisions of the university, but both medicine and law students must learn these additional research techniques if they are to maintain and enlarge their professional authority.

Community sanction. Society has given the professional control over his

[1] E. Greenwood, "Attributes of a Profession," SW, 2 (July 1957), 45-55.

training centers, admissions, and his licensing systems. However, more recently communities have begun to attack the professions, and in New York City, at least, the individual "communities" want to run the public schools. This desire has extended to the hospitals where there has been a rash of sit-ins whose leaders demand the right to choose the physicians and decide how a hospital should be used. Near riots have occurred against social workers who have been distributing welfare funds. There is no reason to believe that these attacks on the establishment will not spread into the professional schools. Students in some schools of social work have attacked the tenets of the school and may be portents of the future. Community feedback is important, but it is difficult for the lay community member to know enough about law or medicine to make some of the decisions he is attempting to make. The professional schools must train their graduates broadly enough to enable them to communicate with their clients, especially their new clients.

Ethical codes. It is important for professional authority and for community sanction that the ethical codes of the professions be followed. While a public may not know specific canons of ethics, they do have a feel for what is right or wrong on many of the basic ethical issues, which are generally covered by canons of ethics. The law schools, according to Carlin, in his book, *Lawyer's Ethics*,[2] have failed to teach these canons. The school's inability to effect a change in ethical attitudes is sometimes attributed to "anticipatory" socialization. Students, it has been reasoned, especially those who go to elite schools, may already know what to expect and take on the appropriate attitudes even before they arrive at these schools.

Carlin claims that it does not matter what school a student goes to; he does not learn ethics in the school. If he has not learned ethics during early family training, he gets it, or does not get it, "on the job." So that Carlin finds that the solo practitioner in the big city is less ethical than the lawyers in the large law firms. My own study of the "Wall Street Lawyer"[3] confirms Carlin's findings about the stratification of the bar and the ethics of the lawyers in the large law offices. It is hard for me to believe however that no socialization takes place during the three years experience in law school. Thielen, for example, found in his dissertation[4] on socialization of law students that some changes do, in fact, take place there.

An unpublished study of midwestern law students,[5] through a series of situational questions on legal ethics, disclosed that a change from a less ethical position to a more ethical position occurred when first year law students were compared with third year law students. However, when prac-

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[2] J. Carlin, Lawyers' Ethics: A survey of the New York Bar (1966).

[3] E. Smigel, The Wall Street Lawyer (1969).

[4] W. Theilens, Socialization Process Among Law Students, 1965 (unpublished doctoral dissertation, Columbia University Library).

[5] E. Smigel, J. Martin, L. O. Horning, Legal Ethics and Educations, 1958 (unpublished).

ticing lawyers from the same town in which the law school was located were compared with third year law students, it was found that the lawyers' attitudes toward legal ethics were the same as those of the first year students. This information about practicing lawyers supports Carlin's conclusions that the lawyer is socialized on the job. But the entire midwestern survey gives evidence in support of the theory that adult socialization occurs both in law school and after law school.

If these conclusions are correct, then perhaps the law school must look for a system which allows on-the-job training, something dentistry is already doing, while the student is still going to school. Interest in this type of training is evidenced by the growth in the number of summer boarders. Columbia Law School placement offices reports that in 1957 twenty-two students worked during that summer as compared to 222 in 1967.[6]

If the professional schools take on the job of finding clinical work for their law students and then, with faculty help, ferret out the meaning of these experiences, the student will have a new mixture of experience which, if properly handled, may positively effect internalization of ethical norms.

Professional culture. If Carlin is correct that law schools are not influential in helping students absorb ethical standards, perhaps the schools also fail to teach other pertinent norms of the profession. The principles are the same as those discussed concerning the ethical codes; i.e., how do you teach students the formal and informal norms of a profession?

If the professions accept these attributes described by Greenwood as important for their product . . . the graduate . . . then by improving and extending these attributes we may also be meeting the demands of a changing practice and responding to the needs of the blacks, the poor, and other minority groups, while providing stability and growth in professional school education.

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[6] Smigel, *supra* note 3, at 368.

COMMENTS:

Discussant

HENRY G. CRAMBLETT, M.D.*

The responsibilities generally ascribed to a professional college are "teaching, research, and service—in a college of medicine, patient care." Our subject this evening considers two of these three functions, i.e., teaching and research, although I agree with Dean Kirby that teaching and research can hardly be separated.

Professional education must be made relevant to the career goal of students enrolled in the college. No longer can traditional, inflexible, and stereotyped curricula be justified for students who are preparing to go forth into a changing society.

Medicine has been severely criticized for not graduating enough physicains fast enough. Moreover, medical faculties have been blamed for not "producing physicians" who want to become "family, primary, or general physicians"—as if medical faculty could at the push of a button plan the career goals of its students. In a similar fashion, as alluded to by Dean Kirby, other professional schools are under criticism both for what they do and what they do not do.

It is evident then that the faculty of a professional college must be secure enough to constantly review what their college is doing educationally and how their efforts can be made more efficient and more applicable "to the times." Our own college of medicine has initiated a new curriculum after months of planning and discussion. The curriculum will accommodate increased student enrollment and at the same time cut the required months of study from four calendar years to three calendar years. In this curriculum the importance of using the outpatient environment for clinical learning experience is stressed. The increased attention to ambulatory care is realistic in considering the health care needs of our population today. Patient-oriented, vertical presentation of the content of the curriculum in chronological fashion from conception to death seems to be a logical departure in this curriculum. From the very beginning the student will be given insight into the physician as a scientist, medicine as a way of life, and the place of medicine in society. The most important accomplishment of the new curriculum is the abandonment of the rather rigid traditional separation of the "basic" or "preclinical" years from the clinical years. The new curriculum is based on the assumption that the basic scientist and clinician must combine talents to teach the normal life processes in health, the alterations in disease, and the appropriate approach to diagnosis and therapy. Even though we have just undertaken significant curriculum revi-

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sion, our faculty must constantly review our instructional offerings to be certain that we do not become complacent, inflexible, and unresponsive to the needs of our students as the professional practices in this country change.

How large a role should research have in the academic programs of the professional school? Surely, most would agree that research is essential if a professional college is to achieve overall excellence in its academic programs. No one can deny that it is the function of universities to seek to add to existing knowledge, to help solve presently unsolved problems, and to assist communities in applying intellectual heritage to problems of current concern. Therefore, I do not believe that research needs to be justified in a university setting. However, university conducted research is under criticism and danger from at least four standpoints, and I would like to comment briefly on these.

(1) Faculty have been criticized for doing research at the expense of the "optimal faculty-student relationship." It has been charged that the research leads to disengagement between students and faculty, which infers that the only valuable faculty-student engagement is in the classroom. While no one could agree with the latter inference, it does impress upon us the need to be certain that our research in the professional college contributes to the educationl goals of the college and that indeed it prospers with student participation.

(2) Extramural research support especially that from federal sources is dwindling. The ready availability of extramural research funds in the past has fostered a state of dependence on the part of certain professional colleges as well as their parent universities which is natural, but which now leads to a most perplexing situation. Over-emphasis on research and dependence on federal funds is currently damaging educational programs in those universities where planning for such an eventuality as diminished extramural support has not paralleled the increasing research budgets of the respective colleges.

(3) By the very nature of applied research in a college of medicine, it has been necessary in many instances to use human beings as subjects in research experiments. While the profession has adhered to the highest ethical standards, it is not surprising in this day and age that concern has been expressed about what represents "informed consent" of such a subject in clinical investigation. There is no question that the patient who is a subject in a clinical investigation has the right to know what the potential harm of the investigation is, what he may expect as a benefit, if any, from the investigation, and what alternative methods of therapy are available to him. There are even more serious moral and legal questions concerning what constitutes adequate "informed consent" in the case of a minor. Rigorous review of proposed clinical investigation by colleagues in a profes-

sional college as is routinely done assures that the highest ethical standards will continue to be followed and that the concern for the safety of the patient will remain of paramount importance. In our own College, each proposed investigation is reviewed at the departmental level, by the College of Medicine Research Committee, and finally by the Executive Committee.

(4) It has been charged that the researcher is not a good teacher. I would submit that this may occasionally be true but how many faculty members who do not do research may also be classed as poor teachers? In those cases in which the researcher has no interest in teaching or ability therein, he should be relegated to the research institute, industry, or university setting where it is clear that he has no teaching responsibility. On the contrary, with the proper mix of research and teaching, I firmly believe that indeed research is a "catalyst" to making a faculty member more dynamic and better in his teaching efforts. There are certain pitfalls that a researcher must avoid in order to be a good teacher. He must make certain that he leaves adequate time for preparation of the courses for which he is responsible. The researcher's narrow focus on his own area of interest may make it difficult for him to become adequately knowledgeable of broader areas. Occasionally, the researcher may unwittingly resent the intrusion of a long standing teaching commitment on a research experiment in which exciting developments suddenly appear. However, those outstanding academicians who combine teaching and research are aware of the above pitfalls and manage purposely to avoid them.

INTRODUCTORY REMARKS AT THIRD SESSION

HARRY W. JONES

We have been building up to this afternoon's discussion of "The Clinical Component in University Professional Education." Thus, at our opening session, it was provisionally agreed—although I sensed a few stirrings of politely withheld dissent from some of the law students in our company—that a university's distinctive task is the pursuit and transmission of objective knowledge and that universities and their professional schools are inefficient agencies for direct social action or for the direct furnishing of societal services. On this hypothesis, clinical work in the university has to be justified chiefly if not exclusively in terms of the contribution it makes to the intellectual and moral education of professional students.

President Levi and Dean Smith had their doubts, grave ones, as to whether the pattern of clinical education so well established in medicine could be transferred to other professional schools of the university. Specifically, President Levi said—and I think I quote him accurately—: "Not even Bill Pincus has convinced me, and I hope he will not be able to convince you, that it makes any sense to keep a three year law school program just for the purpose of having a clinical year in lawyer training." When you hear the blockbuster of a paper Mr. Pincus has prepared for this session, you will see that Mr. Pincus is responding to President Levi's challenge with all guns firing and full speed ahead.

You will recall, too, that the prospects and problems of the "clinical component" figured prominently last evening, when Dean Kirby, Dr. Cramblett and Professor Smigel discussed the professional school's teaching and research responsibilities. All three of them, it seems to me, gave aid and comfort to Mr. Pincus's cause: Dean Kirby because he wants legal education to be more challenging and innovative and is persuaded that clinicial experience will encourage the law student to look beyond the law library to the world outside, Dr. Cramblett by his testimony that the clinical component contributes more than anything else to the excellence of American medical education, and Professor Smigel in his insistence that no one is really "socialized" into a profession and its modes of behavior until he has discharged the professional's role with a living patient or client before him.

I first met this afternoon's principal speaker, Mr. William Pincus, when he, working in close cooperation with Dyke Brown, was the Ford Foundation's man in motion for law and legal education. These were the years B.M.B. (before McGeorge Bundy) when law teachers, too, joined their voices in the great academic hymn of the time, "Praise Ford from whom all blessings flow." Bill Pincus, I can testify from hard experience, was no easy mark and no freehanded Maecenas. Good lawyer that he is, he was

incisive in his analysis of proposals, critical in his judgments, and no respecter of persons.

Mr. Pincus, I suspect, came out of it all thinking that legal education was pretty good on the whole but deficient in—shall we say?—"soul." His experience with the Ford Foundation persuaded him, or so I read the regular reports of his Council on Legal Education for Professional Responsibility, that the law schools have been slow to recognize what Dr. Pace, Dr. Cramblett and their colleagues have long known in medicine, that is, that a patient or client must be viewed and treated as a whole person, in all his personal and social singularity, and not as an item for conceptual analysis and classification. It is this view, I think, that first aroused Mr. Pincus's interest in the clinical component of legal education and persuaded him to become the president and eloquent spokesman of the Council on Legal Education for Professional Responsibility.

THE CLINICAL COMPONENT IN UNIVERSITY PROFESSIONAL EDUCATION

WILLIAM PINCUS*

In other times and circumstances one might take up clinical education directly for its intrinsic merits within the professional school curriculum without reference to other problems of education. We might forego examining even briefly the university and higher education outside the professional school. But the broad title of this program, *Professional Education in the Contemporary University*, suggests a wider look at the university and higher education, at least for perspective. An even stronger incentive for such a look comes from the recent upheavals on campuses in which physical violence became commonplace.

Because of such an abundance of wide-ranging social protest with tactics and philosophy of destruction, it is in order to point out that there are critics of the university who are friends of the university and of higher education, and who are concerned with preservation of human values and improvement of education through reform. Advocates of clinical experience in the law school count themselves as such critics.

What is the clinical component in university professional education? The clinical component is that in which the professional actually performs a specialized service for a person who needs his particular skill. It is the practice of the profession as a student under faculty supervision. When done in a professional school as part of qualifying for the professional degree it is properly called clinical education since it involves the teaching, supervising and rating of the student's performance by someone representing the professional school. In medicine the customer for the service is called a patient. In law he is called a client. The same or similar terms are used in other professional-customer relationships.

I. CLINICAL EDUCATION AND THE UNIVERSITY

In the overall scheme of higher education, because it takes the advanced student out of the classroom, clinical education in the professional school is a corrective for the deficiencies inherent in a long process of classroom type education where the student has larger and larger doses of so-called knowledge pumped into him over a longer and longer period of time on the assumption that it is all good for him. Educators tend to overlook the corrosive effect of so much confinement to the campus on the human personality. The student's role is passive. He is locked away from the rest of the world in the sense that he is a consumer and not a producer of foods, services, or even ideas. He reaches and passes well into adulthood still

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beng spoonfed from various sources, and most especially by the university and its faculty whom he sees more than anyone except his fellow students. At most the student may have an occasional opportunity to become an observer in some field experiences. He fails to find anything that is peculiarly his as a contribution to the world. He suffers from an increasingly poignant sense of lack of fulfillment. A fundamental part of the student's personality is retarded in its growth—that part which takes us through life with at least that small sense of security which comes from the knowledge that we can do something of consequence to others in the larger world. The older we get, the more we need to participate in a productive way in the larger world and not just in the university world, for we know instinctively that somewhere out there is the real world for all of us; and that for most of us formal education is the preparation for the real thing—not the real thing itself.

Because human development also requires learning through doing clinical education is a necessity at the professional school level in higher education. It gives the student a real life role in the world as an integral part of his education. Though not the whole answer to what is best for the human personality and soul in a prolonged educational process, the clinical element can serve to make educators aware that they should concern themselves with the whole being which is the student as well as about how to make a better technical or intellectual contribution in their speciality. For we will not truly educate, or even know the tranquility we need to educate, if we do not also address ourselves to the basics in human development, as well as to cutting out the cancer of war, the vices of society at large, and even the corruption in the university. For it is the innate restlessness of the frustrated and unfulfilled adult student, as well as these other factors, which results in the phenomena we are witnessing on campuses.

We shall continue to be shortsighted if we do not read these signs correctly. Certainly educators have to be concerned about what appears on the students' placards, although they do not have to adopt the same viewpoints. But they also need to be concerned about what is not on the posters and placards. How long should higher education be? Can the students afford the price, psychologically and otherwise, of so much exposure to intellectual brilliance? Or could they do with a semester or two less here and there along the way? Universities are not organized at all, let alone organized to consider such problems. But they will have to reorient their thinking along these lines if the definitions of the problems and their answers are not to be dictated from the outside.

Unfortunately, even educationally-oriented foundations have not awarded attention to such fundamental educational matters. They have catered to and encouraged questionable propensities in universities, instead of acting as constructive critics whose strength comes from steadfast support of

higher education. Philanthropy has been uncritical instead of being the private, friendly critic higher education needs. Its record is not good enough. How many grants have been made for quality education in fewer years as contrasted with grants encouraging longer years of study? How many have even raised the possibility of going one way rather than the other? Perhaps the fact is that philanthropy too has viewed higher education so much in terms of the teacher that the student is all but forgotten. Foundation grants have tended so much to encourage research, consulting, travel, etc.—all activities which by and large reduce teacher-student contact, rather than increasing it. How to reverse these tendencies involves tough problems worthy of the best brains in philanthropy and in higher education. The directions we need to take may be indicated by suggesting that we should get agitated over what we may be doing to our students, as well as for them. Clinical experience in the professional school is a force for making us confront this issue because it does make the student an actor as well as a spectator.

Peculiarly enough the isolation of students in prolonged higher education of the traditional type also leads the student to assume an air of intellectual arrogance and superiority. There is a prevailing tendency always to substitute great thoughts for the apparently small deeds which human existence calls for. One can detect such arrogance even in the so-called revolutionary campus rhetoric and most certainly in the actions of those who perpetrate deeds on the academic community in the name of change or revolution for the better. In this sense, it appears, the student learns too well some of the lessons of the academic community. The longer he stays on campus the more he deals in the currency of the realm; large issues; masses of people; intellectual gymnastics; verbal fireworks—either hissing sparklers or exploding charges.

The human experience is distilled into abstractions, necessarily so, for the purposes of teaching. But there is a dehumanizing element in all this. Individuals and their petty lives become reduced in size and consequence. We forget that smallness and decency are more of the essence of humanity than greatness and brutality. We do not learn how to deal with one person's problems, or even with those of hundreds or thousands. These become intellectually expendable. Physically removed on the campus from the masses, teachers and students seem to believe that their thoughts grow in importance as they deal with millions and with larger issues. Smaller quantities of people can be ignored or brushed aside. We do it subliminally in the educational process at the higher levels, particularly in law and in the social sciences.

It is an easy leap from learning about life in this dehumanized way to believing that this is the way actually to approach the solution of life's problems: exclusively on a grand scale. Think big! This is the lesson the

students learn well, capitalizing as well on the natural affinity and need of the young for arrogance. Analysis on a global or cosmic scale leads easily to "solutions" on a global or cosmic scale.

Clinical education, in its confrontation with the individual's share of the world's headaches, humanizes the educational process. It teaches that while the professional's intellect dissects the larger problems and places the individual's plight in the larger setting, the professional's dedication and skill also has to be used in solving the individual's problems for the sake of the individual and not for the sake of the answer to the big problem. In the person-to-person helping role, the professional, still as a student, begins to add to his intellectual competence a feeling for humanity and decency. He learns through the insistent demands of another personality the necessity of placing restraints on his own leanings: to work out approaches that are suitable to more than his own inclinations, to repress the arrogance which would dictate answers for others.

Related to this is clinical education's value in inculcating a bent for persistence and application, for sustained constructive effort, despite the inevitable frustrations of life. It should be easier to appreciate the destructive inclinations in many today, when all of us have heard the shrill exhortation to burn and otherwise destroy, coupled with the assurance that the aftermath of an orgy of destruction is bound to be paradise on earth. Some of us may suspect that, instead, the intervening fires of hell may serve as the model for the ensuing state of affairs. But the important thing is the recognition that the educational process has to take into account the development of maturity by encouraging experience which teaches us how to live with frustration as well as achievement, in fact to use each frustration as a launching pad for achievement.

It is not surprising that the rage of rebellion vents itself so fiercely on the university. Thus it is in regard to those from whom we expect the most. Rage against parents can be savage. A whole profession of psychotherapy has been built on this phenomenon. The university inherits the same unenviable position. It becomes the object of fury stemming from frustration when the young discover the imperfections in their parents and in the university, and, of course, in the rest of the world. When we are small we instinctively strike out at the loved one when we do not get what we want. As we mature, we learn to turn our propensity for violence and destruction because of frustration into an energy for constructing our own version of the world. We realize instinctively that there is no merit to destruction per se. We enjoy decreasing satisfaction in what others can hand over to us. We move to constructive action for ourselves in what is known as responsibility. We learn how to live with loss as well as with gain along with those who say: "You can't win 'em all."

Clinical education contributes to accelerating this passage to maturity

and to constructive behavior. It rewards the person with an instinctively well-ordered direction and philosophy by giving him the opportunity to move toward his goal by tangible acts. Clinical education teaches that, no matter how well-conceived a grand scheme, it takes dedication and work over a long period to move toward realization of the scheme. It also instructs that no scheme, however brilliant intellectually, has any meaning if it cannot be translated into the demands of human existence and individual lives. Clinical work prepares us additionally for life as people and professionals by making us able to move ahead in spite of loss and frustration, by giving us enough avenues of forward motion and new opportunities, because there are always individuals who can open avenues of success for us, in addition to those who are our companions in failure.

There is still another aspect of higher education which stands to be humanized by clinical education. The reference here is to the phenomenon of so-called credentialism and the self-centered outlook it engenders. Parenthetically it should be noted that self-centeredness is also at the root of other problems already referred to: educators who see the schools as serving their purposes with an accompanying lack of concern for students; educators and students who develop an arrogance that they know best for the rest of the world; and students who want what they want and now, so that persistence beyond frustration is not considered an important human trait to be cultivated.

American higher education has provided, and continues to provide, credentials for those who did not inherit them, making it possible for such persons to move to higher positions professionally, socially, and economically. With all of the criticism that any aristocracy is subject to, credentialism based on higher education is like democracy "the worst system except for all the rest." It needs to be improved, not scrapped—at least until a better system is devised.

Being so widely available in this country, higher education has contributed enormously to social mobility. In the process it has been sold on the basis of economic and social benefit to the individual. Statistics have been marshalled showing the higher life earnings of a college graduate. There has been little subtlety in this effort, because the purpose has been to appeal to the strongest personal motivations of the young generation, and of their parents who pay the taxes and vote the public policies which are the foundation of support for institutions of higher education.

If these motivations are strong at the college level, they are stronger at the graduate and professional school level. They have to be, to justify the added investment of time, money, and everything else. They are, because the professional school is even more clearly designed to lead into a paying occupation of high standing.

Thus there is a powerful element in education stressing that it is for the

personal benefit of the student. Probably the unspoken assumption is that society benefits this way—according to Adam Smith—as each one pursues his own end.

While these motivations are essential, educators can and do take steps to broaden the outlook and the development of the student beyond his own career ambitions. To be effective this must go further than intellectual content of teaching or exhortation. Clinical work involves the student in the problems of other people as a central part of training for a profession. Without undermining the personal motivations, clinical work perforce exposes the student to the fact that he has to serve another in order to bring respect to himself and his profession, as well as earn from others the income which determines his standard of living. In clinical work the student learns to give as well as to receive, to do it with grace and compassion, with understanding and satisfaction, and also that his professional education is for rendering service to others and not just to be exploited. All this is learned as part of, and not separate from, formal education, broadening its content and meaning, and making it more than the acquisition of a personal benefit in the form of credentials.

In the Age of Aquarius how does one tell the spurious? How does one distinguish non-values or false values from genuine values? It is difficult and there is no single answer. But education has to deal with this problem as well as with data. This involves the development of judgment, an indispensable asset, as well as the acquisition of knowledge.

The difficulty of teaching as well an appreciation of, and sensitivity for, true and lasting values is made greater by the fact that man does not live by bread alone. He must have diversions and entertainment as well as the company of other human beings, in short: theatre and community. Monotony and solitude result in madness--even the monotony of good works and good causes. There is such a thing as too much of a good thing. It leads to restlessness, and restlessness has made man move upward and forward, or downward and backward, as a geology professor used to say, "to the mesozoic slime." The choice of directions is dictated in large part by responsiveness to values as distinguished from distraction by entertainment or happenings as powerful as the pull of the latter is. In our age some of the best examples of good theatre are outside the traditional theatres themselves. In fact the enchantment and delight broadcast by theatrical performances has invaded the world of teaching, research, and other university activities—the latter category being constantly enlarged by so-called innovative and creative projects in which there is indeed greater and greater difficulty in telling the educationally sound from that which is spurious. Undoubtedly this is characteristic of a dynamic age. But here too clinical education can help in part as a yardstick for the developments of a time with so much emphasis on change. It does so by returning us regularly as

part of education to the context of service to another human being. It brings to the forefront an important criterion for measuring true value: Is what we are doing a benefit as well for other individual human beings in our society? This helps to balance the attractiveness of newness and innovation per se, suggesting that the new garments ought to be cut to fit the real needs of real people, rather than the other way around. It should sometimes encourage a second look to examine whether something is new, and to what end. It should reduce the propensity to embrace false advertising and false claims in the merchandising of educational and social gimmicks. There is no prospect, however, that anything will eliminate completely our desire to be fooled occasionally—all the more reason why we should try to develop as sound a judgment as possible in and through clinical education, given the clash of needs in the human personality.

What has been suggested up to this point is that those in higher education cannot educate if they maintain a stance that education is only concerned with the student and not with the person. Educators are dealing with people, and clinical education involves students as people. It returns educators to the function of general practitioner and expands their role beyond that of brain specialist.

It is significant that in some professions like medicine, social work, and teaching below the college level some clinical work is a well established part of professional education. There seems to be the realization that the professional here is dealing with people's lives in a profoundly important way, and that he should begin to learn how to do this while he is still in professional school. Indeed, it is assumed that he cannot learn his profession without such experience. Also evident is the fact that these professional schools have a fairly clear vision regarding the school's goal: It is to prepare members of a practicing profession. This is their acknowledged role, although it is understood that some graduates go off into other occupations—some related, some unrelated. To put it baldly: there is no hangup about the fact that the schools are there to produce the practitioners for a given profession.

In preparing for college or graduate teaching—another profession—the schools have gone to what might fairly be called the opposite extreme. There is no clinical work—indicating that teaching is not considered the real goal of the outstanding college or university professor. The extra hours of credit required for the Ph.D. are not important, nor are the oral exams. The payoff is in the written dissertation—a demonstration of research and writing capacity. This is not a preparation for teaching but for subsequent research and writing—the hallmark of a good college or university professor. He writes and performs primarily for his colleagues, and possibly for the world. He is rewarded for this in the form of bonuses. What he does to educate his students is incidental. From this he derives his

base pay—almost as a matter of routine. As a practical matter teaching encroaches on the time required for research, and very often is incompatible with the research temperament. It is assumed that the important thing is the knowledge gained from research; and that anyone can, or at least can learn how to, teach in a relatively short exposure to students. The graduate —read professional—training of professors is as though they were all to be practitioners in some vast research institute not as though they were going to be teachers of generations of students. This may in part account for the fact that educators and administrators in higher education do not dig into the total development of the student, preferring to limit themselves to the intellect of the student.

To recapitulate up to this point: First, clinical education at the professional school level is especially important at this time in higher education because it serves to correct certain tendencies now encouraged and which need modification. It does so by putting the student in a practitioner-client relationship as a normal part of his professional education. The particular ways in which it helps are:

a) It brings the student out of the classroom in a prolonged period of higher education—serving as a half-way house, if you will, on the way to the outside world.

b) In so doing it makes educators view the student as a whole person, and also view the effect of higher education on the person as well as the student.

c) It helps to offset the development of arrogance—a self-satisfied intellectual elitism. It gives reality to other people whom the professional serves, and puts them in the picture, so to speak, as partners in life with a worth of their own.

d) It teaches the necessity of persistence and application, and develops the fiber to withstand the crushing effects of frustration. It develops the capacity for constructive work for change of a sustained character, and lessens the emotional attractions of instant destruction.

e) It diminishes the self-centeredness of higher education—the all-consuming drive for credentials to cash in—by placing the professional-to-be in a helping relationship to another.

f) Finally, it helps to develop the judgment which instinctively leans toward the real values over the spurious ones—reducing to proper proportions the natural attraction of the theatrical, the entertaining, the new, per se.

II. CLINICAL LEGAL EDUCATION AND THE LAW SCHOOL

In its flight to the university setting from the practitioner-apprentice tradition legal education has up to this point built itself a niche away from

the professional schools frankly preparing practitioners. Legal education is closer to the graduate faculties of social sciences with their bias for research as opposed to the practice of teaching; a bias in favor of self-improvement as a scholar; a belief that mankind will benefit automatically as the scholar or researcher pursues his own interests whether or not there is any apparent link to the tangible needs of others.

In this self-imposed segregation from the practitioner, legal education has stretched to the limit, and possibly beyond, the thesis that practitioners are not teachers, and teachers are not practitioners. In doing so, the self-styled national or quality law schools, which are the "Establishment" of legal education, have even professed that they exist not to produce practitioners, but to be the intellectual progenitors of the philosopher-kings of Plato, men and women who can rule in a democracy because of their merit (demonstrated by admission to and graduation from these outstanding schools), and by virtue of the legal education received (again from certain outstanding schools).

While the bulk of the law schools have not and cannot lose sight of their mission—to prepare practitioners—they too are put in conflict and in some confusion by the so-called leaders in legal education. This has been the situation in legal education until quite recently. It has only begun to change, although the indications are that there will be more changes in legal education than any of the experts have been imagining. The principal agent for change in the law school is clinical education, a growing phenomenon. The effects of clinical education will be felt not only in the law school, but at the college level, and, of course, in the administration of justice and the society.

Clinical education in the law school will exert a profound influence on legal education, probably by moving legal education closer to the professional schools like medicine and social work, where the avowed purpose is to produce practitioners and to be involved in the delivery of professional services to the public. As has just been mentioned, in the flight from the apprenticeship system the so-called leading and image-setting law schools in the university have modeled themselves on graduate faculties in those disciplines where the professional preparation through the Ph.D. is for research and writing, and not for practice, as teachers. Yet in both law and these other disciplines, the professional degree (Ph.D. or J.D.) is used to admit to practice as teacher or lawyer. Clinical education will serve to change this development which is more understandable historically, than justified by the needs of the public, the machinery of justice and the legal profession.

To focus more specifically, clinical legal education, in its stress on practice with a client, should help to clarify the real mission of the law school, which is to produce practitioners. This is always a plus, for we can always

do better when we understand what we are about. There is every reason to be proud of the American system of legal education, but not because its teaching produces better lawyers than any other system of teaching the law. In fact there is not one shred of evidence to suggest that the American law schools produce better practitioners than the system in England, where there are no law schools as such.

The important distinction between the American law school and the British scheme, where legal education per se is so much in the hands of the practitioners, is that the American law school has opened entry to the bar for all classes. Both systems seem to prepare good practitioners. The American system makes possible more open access and more upward social mobility. The schools essentially control who studies for the bar, and not the profession. In this sense the law school here is part of the social revolution wrought by the American colleges and universities. For these reasons successively upward mobile groups have sought the benefits of what has been called credentialism, which for all its drawbacks, has achieved an overriding social purpose of opening the paths of entry into the American Establishment. Catholic law schools are in part an evidence of this phenomenon, as are the substantial disparities in resources among law schools generally. The point is that many law schools with poor resources have been the launching pads to achievement for many financially poor boys and girls who were rich in talent.

These are the real facts of American legal education which are often lost sight of in a fog of shibboleths, the result of much oft-repeated talk among legal educators when they gather in professional conferences and meetings. An almost impenetrable miasma is caused by talk about the law schools producing—not lawyers—but so-called public leaders, as though the methods and curriculum for doing so exist, and even more important, as though this would be a desirable enterprise in a democracy—a kind of West Point for all important jobs outside the military. Clinical legal education is an imperative to save us from this immoral, anti-democratic, and thank goodness, nonsensical talk because it says the job of the law school is to produce lawyers first—some of whom will become leaders.

Those who talk about producing public leaders are walking around the facts, choosing what they like, just like at a smorgasbord. In all of this there is a lot of fuzzy thinking, promoted by narrow-minded self-interest, frequently embellished by high-sounding phrases. Of course, lawyers are bound to be public leaders. One whole branch of the government is largely a monopoly of lawyers. This is judicial administration. It includes public positions, like that of prosecutor and judge, as well as those who represent persons. In addition, because of the link to politics in the judicial system, lawyers move quite easily in and out of legislatures and executive posts. Lawyers, like the military, have a well staked-out governmen-

tal and political base. It is not strange that they too are a strong power group in government and out. Any assignment of an area of government to any segment of the population turns over substantial power, and also enhances the self-image held by the members of such a group—in this case, the lawyers. Such a situation quite readily leads some in the preferred profession to believe that what the public has given or allowed them to take "is an inalienable right," in recognition of some special virtues not possessed by other members of the society. The same attitude begins to pervade the professional school, although significantly the perceptions are different in different schools.

In most law schools there always has been and there still is a fairly clear vision that the role of the school is to prepare practitioners to serve people; that the rewards of public office, if any, come because of this. But there are some schools which have reached the point of skipping over their reason for being—to produce lawyers for legal services. If they recognize the reality of practice, it is to practice, as they sometimes put it, "in the grand style." Keeping their eyes on the stars, so to speak, they are avowedly in business really to produce those earlier referred to as Plato's philosopher-kings: those who will wield important power and rule society because of their self-evident intellectual superiority and educational attainments.

Perhaps the culmination to date in this kind of thinking is the announcement by a well-known Northeastern university of its intention to start a law school to train "policy makers." Presumably because the public has not yet accepted the validity of such a degree from a university, the prospective students were advised in a footnote that they would also be prepared to take the bar.

One can begin to suspect in the circumstances that "quality" and "standards" in some of these schools are almost synonyms for aristocratic and elite, rather than standing for what all would strive for: bettering legal service to all the people. By incorporating the reality of lawyer-client work through clinical education the law school may prevent its severance from the people without losing its opportunities for intellectual freedom.

Clinical legal education should help to restore balance and proper perspective. By its nature—lawyer-client work—it should inject into the life of the law school an instinctive appreciation of the fact that the legal profession and the professional schools which serve the profession exist to serve the people: whenever a client believes he needs legal service, as well as when the professional feels prepared to give service. It should also bring back an understanding of the democratic principle that power is given by the people to those who serve them and because of this deserve the delegated power, and also that those who a priori assert a special claim and

competence for public power are not living in the democratic tradition. This can be true of professions and professional schools, as well as of others.

Finally on this point—it is rather difficult to understand why those connected with a law school will not readily respond to a query on function and rationale with a proud response that their business is to prepare persons for the practice of the law. Is there anything disgraceful or demeaning about such a statement? If there is then the teacher-lawyer and the practitioner-lawyer had both better clean up the house they both live in. They should look to their responsibility for doing so, rather than attempting to avoid it.

A large part of the impetus to avoidance of such a direct response as to role comes from the fact that the confusion about the role of the law school thrives on the failure to deal directly with how one prepares law teachers as distinguished from law practitioners. Though unstated as a rule, the practice seems to be that the graduates of certain favored law schools are best qualified to teach, especially if on law review cum post-graduate experience with an appellate judge. This surpasses in unfounded presumptiveness even the non-sequitur treated above in discussing the use of the Ph.D. as a license for college teaching. Nevertheless there always has to be some system, "the system" only being the one inveighed against at the moment by those pushing for change. Since not all the graduates of these favored schools choose to become law teachers, these same schools have invented a so-called graduate degree in law, to be bestowed upon those who wish to teach although they were not fortunate enough to receive their first degree in law from these schools.

Only rare and passing attention has been given to the possibility that it might be desirable to have law teachers have some experience in practice before joining a faculty. All of this contributes to a gap between law teachers and law practitioners, as though they are not really members of the same profession. It is not a desirable state of affairs. Clinical work in the law schools also should help to give everyone, whether he becomes a teacher or practitioner, the feeling that he is a member of a practicing profession and honored by being part of such a profession.

Sad to say, history suggests that in and of itself clinical work as in medical education, for example, does not guarantee a greater concern with medical services for all. There is this one respect at least in which the records of medical and law schools coincide: They both have atrocious records of disregard for the problem of better professional services for all, regardless of the ability to pay. Only recently has this started to change. In this respect the records of the respective practicing professions are not much better, although in each case the practicing professions are doing much more now than the professional schools. In medicine there certainly was a first-hand awareness that working class and poor people get sick. There just

was no attempt to insure service. In law schools and in the upper echelons of the legal profession the mythology was created and propagated that working class and poor people do not have legal problems, or certainly not any "intellectually challenging" to law faculties: a landlord might have legal problems with a tenant, but a tenant became part of the landlord's problem, and not a human being who required his own legal counsel and representation. It would appear that the outside society has to impose its requirements for better professional services for all. When this happens clinical work can help too by preparing law graduates, as it does in medicine, to be better able to serve as practitioners.

It is also important to recognize that there are certain areas where the intervention of law schools through clinical work is an indispensable element for improving the administration of justice. For the foreseeable future law students and law faculty are the only ones who can do something which holds promise, day in and day out, of upgrading the machinery of justice.

Investigations, reports, reorganization are occasional actions with an impact of their own. But the continuing pressure for improvement must come from the permanent addition of a new factor in legal institutions. This can only be the ombudsman-like role of law students and their professors, which is in addition to their service as lawyers and what they learn in the process.

The ombudsman role and its effect will come from clinical work in such places as the local courts, police stations, prosecutors' offices, and jails and prisons. Experience already indicates that the physical presence of law students and their teachers in such locations has a salutary and elevating effect on practitioners, judges, and various public officials. It also has strengthened confidence in justice on the part of those who have not had the legal advice and assistance required. The law school which is satisfied with an occasional study of one of these settings is far from discharging its responsibilities. Over and above studies the law school can provide the continuing impulse to improvement through using such settings for some of its clinical programs. Incidentally, this creates the process through which the law school can much more readily be in touch with situations requiring study.

There is much to be learned about how to conduct clinical education in such settings. Some judges and opposing counsel have not taken kindly to zealous students who have forced them to go back to the library and look up cases. The same has been true of the reactions of some others. But by and large the effects have been accepted—if not heartily welcomed at first—and the public has benefited.

Is it all right to assume that the life of law students is to be comfortable in the future, as it has been up to now? Or that they even want it thus?

It is taken for granted that medical students have to spend nights, weekends, and even summers learning the dirty work on emergency calls, in wards, etc. Why not law students to advise those who are arrested in the middle of the night? To provide counsel in certain lower courts on a regular basis? To do the same in jails and prisons? If not the law schools through clinical work, then who? The answer cannot be that this is no concern of the law school. Nor can it be that law students are incapable of doing the job—because there is enough experience to show that they are able to do it very well, with some training and supervision, the latter being the task of the law school.

Unless clinical education grows and expands into these areas there is no likelihood that the law schools and the legal profession will succeed in cleaning up their own house—the machinery of justice. This is not a suggestion that law schools should not have other and more general concerns. It is only a strong plea to make the necessary contribution where they are uniquely qualified, and where no one else will or can contribute as much.

Once the law school becomes involved as the place to train practitioners, and as a center working to reform the machinery of justice through clinical work, it will adopt a different posture about matters relating to practice. No longer will the law school take the position that "the bar" can do it better as though "the bar" is a foreign agency. The bar itself can help in making things better, but it too needs the disinterested and specially-endowed machinery of education.

The improvement of the machinery of justice is a responsibility of the law school, but equally important is the teaching of such responsibility to the law student in the setting of the practice of the law. In several of its newsletters the Council on Legal Education for Professional Responsibility (CLEPR) has set forth the major educational values of clinical legal education for the law student. Teaching responsibility for improving justice has been described as follows:

> . . . clinical legal education . . . can develop in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and the other arrangements of society, as they are reflected in the individual case. It is the lawyer's work on the individual case and with his individual clients that constitutes the essence of his professional job. It is in this environment, therefore, that he needs to learn to recognize what is wrong with the society around him—particularly what is wrong with the machinery of justice in which he is participating and for which he has a special responsibility. This is a special social aspect of clinical legal education, apart from the delivery of legal services by the law student.
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> Some legal educators have argued that a law student can learn more, or at least as much, about social problems by an adequate exposure to certain kinds of research including field and empirical research. There is no doubt that this is so. This is also so for students in any social science discipline—or indeed in any discipline. For a good research experience per se

> can yield extraordinary insights into social problems. However, the future lawyers are not going through law school to learn how to conduct social science research projects on social problems. They are going through law school to learn how to serve persons who need legal services. This is still the primary function of the law school. Consequently it is important for the person training to become a lawyer to develop an instinct which leads him to perceive, from the specific facts of a case involving a client, a general social problem. For this is the form in which he will be exposed as a lawyer to the social problem, and not by way of the opportunity to make a special study of the problem apart from the handling of individual clients and cases. Of course law students should have the benefit of participating in good social science research—but not in lieu of a clinical experience with clients and cases.

A considerable part of the machinery of justice is the practice of the law. It happens to be a private practice but lawyers are officers of the court. This has to be recognized and dealt with explicitly. Clinical work in the law school plunges the law school into the myriad of matters involved in how the law is practiced. It moves the law school closer to the practicing bar, closing the undesirable gap between the two which has hitherto been referred to. It gives the professional school the opportunity to deal with standards of practice and behavior in a way which holds more promise than mere academic discussions of ethics. It takes up directly the fact that the machinery of justice creaks because of the disparity in standards of practice among different segments of the bar. We have written about responsibilities of the law schools in this respect, drawing attention as an educational value

> . . . to the teaching of standards for the performance of the basic skills involved in service to a client and a cause by a lawyer. By this we mean such skills as interviewing, collecting facts, counselling, writing certain basic documents including pleadings, preparing for trial, and conducting trial matters, as well as following up after the conclusion of a trial. For years legal educators have eschewed the task of working these areas. The most commonly given reason has been that the law graduate will learn these skills best when he enters on his practice. The result has been to leave most law graduates to their own devices for they will have no postgraduate tutorial experience as an intern. Even those who will be tutored as interns after law school should gain from what they can learn in law school, for even in the best of settings and with the best of tutors there are certain commercial or institutional forces which restrict the young lawyer's efforts to the purposes of his employer and client as quickly as possible. In no institution outside the law school is there as much tolerance for abstract perfectionism and repeated efforts at refinement.

One of the most important standards to be taught is behavior in the sense of the professional managing his own emotions and intellect, and resolving the clashes which occur in him. We have described this as ". . . the opportunity for a law student to learn about the management of his emotional commitments to a client and his cause."

> In the law school, removed from the necessity to earn a fee, the law student has his best and possibly his only opportunity to learn about managing a proper commitment to a client and his cause. The student can learn what a high order of commitment should be. He also should be able to learn when a commitment becomes distorted in a professional service setting, when it may become destructive and counter-productive both for the lawyer and his client. There is a delicate sensibility about involvement and restraint which continues to be developed through extended life experience, but the law school can provide the best start at training these faculties. It should be the place first to become aware of these nuances in the rendering of professional services. Every experienced practitioner will recognize the tensions created in attempting to strike the proper balance in each lawyer-client relationship, and between one client and another.
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> In the live setting the law student will have to respond in a way that is fundamentally different from the response he is asked to give to a written problem. In the live situation the facts do not come in the relatively orderly sequence which is provided by writing. In real life the facts come quite often in a chaotic way. Indeed, the facts will not come without hard work at eliciting the facts. Quite often the source of facts turns out to be an abrasive or even abusive human personality. Yet this person is typical of many personalities who will be requiring legal services from the practicing lawyer. Instead of the comfortable and convenient printed page, the law student will be confronted with someone who may seem to be more of an antagonist than a person asking for his assistance. Still this is how people behave in periods of stress and strain when legal services are required. It is important that the law student be rubbed by a repetition of such experiences to find out how to maintain his capacity to think and to be useful as a lawyer under such circumstances.

These are indeed dimensions which legal educators are only beginning to explore as they enter the realm of clinical teaching. These areas have to be thoroughly developed if there is to be a more complete education of the lawyer, as well as a concern with the total machinery of justice which includes the private practice of the law as well as public rules, laws, and institutions.

There is already enough experience to suggest that student reaction and faculty involvement are moving quite rapidly to recognize the values of clinical education for the student. They do see the hastening of professional maturity and competence as a legitimate and vital function in legal education, as well as the benefits in broadening student involvement in the problems of reforming the administration of justice.

But while the goals are accepted there are still troublesome paths to be traveled on the way to achieving the goals. In fact there are painful choices as to which paths to travel.

Some of the greatest agonies, where they exist, come from a struggle in law faculties on how clinical legal education changes their existing world. It also comes from the uncertainties of a transition period when the unknown is so much more threatening than the known. There is a strong un-

settling factor in the prospect that clinical legal education may become an important part of the law school curriculum. It is probably the greatest change proposed in legal education since the creation of law schools as the replacement for the apprentice system. On this point we have said:

> Legal clinics provide the opportunity to turn the constructive analytical skills of law teachers on law teaching itself in a way that goes beyond discussion of tweedle-dee and tweedle-dum, altogether different from the usual consideration of curriculum reform. The usual discussion of curriculum reform involves such alternatives to existing courses as using the problem or case-method; including written materials other than cases alone; experimenting with films, video tapes or simulations; or even devoting so-called new courses or seminars to the latest substantive area "discovered," be it "poverty law," "urban law," or "environment."
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> It is remarkable that in a professional schcool like the law school discussions of new subject matter and methodology have so largely ignored and avoided the educational potential of the real practice setting involving clients and practitioners.

It is often a favorite pastime to stress the great change that came from so-called hornbooks to so-called casebooks. Yet such discussions really show a willingness to manipulate apparent changes through teaching materials as against a real change such as happened by taking the law student out of the law office where he was not being taught adequately by lawyers, and placing him in a law school under professional teachers. Since that time nothing of equal significance has happened in legal education, although law professors have filled publications with articles on the assumption that changes have occurred, in the meantime urging more of the same —non-change or pseudo-change. These are good in-house pastimes, even if unimportant from the viewpoint of the world at large.

Clinical legal education does promise to make some major changes because it means taking some of the time now used for lectures and seminars and devoting it to the practice of law, step by step, under the tutelage and guidance and supervision and rating of law school faculty. It confronts the law school with putting together a curriculum and teaching staff which may be quite different in its various parts, instead of variations on the same theme played by the same kind of artists.

After two years of experience the Council (CLEPR) has learned much and seen certain trends developing. Everything that has been learned has come from the experience of the more than half of the ABA approved law schools which are involved in some clinical legal education effort with the aid of one of the seventy CLEPR grants made to date, and from the experience of other schools which have involved themselves in clinical legal education without any financial assistance from CLEPR.

Certain things are apparent and should be considered as indicative of what lies ahead in the development of clinical legal education. Most

schools which placed law students in legal services offices operated by other agencies have discovered that it is too difficult or even impossible to supervise their law students through the attorneys working in the office. Those who are operating lawyers cannot do justice to a workload and teach students at the same time. The workload in legal services offices is too heavy per attorney to successfully impose an additional burden on these attorneys. In addition there is always the question of whether every attorney is temperamentally suited to being a teacher-supervisor.

To get away from farming out their students in such situations law schools are setting up their own clinic operations. Some schools have started and operate their own legal services office. Others have taken over a part of an existing office and installed their own teacher-supervisors.

In having their own clinics the law schools have enhanced their potential for supervision. Students and teachers are clearer about the educational part of the venture. An accompanying phenomenon has been the restriction of caseload in order to permit more teaching and emphasis on quality work.

Along with such developments has come an increasing allocation of time and credit for such clinical work. It has become obvious that clinical work is very time-consuming; that it is easier to earn two or three credits in a class or seminar with a limited work liability. Clinical work is open-ended—much more so than regular classroom work. Live clients and the dynamic legal process do not fit neatly into a few predetermined hours a week. Law schools, therefore, are becoming involved in experiements with several days a week being devoted exclusively to clinical work, or even with clinical quarters and semesters. Credits awarded for such work have gone up correspondingly. In some cases the credits have gone up to the point where few traditional classroom courses are required to round out a semester. This too frees the student for more clinical work.

Except in one case the schools have not bridged the gap between indigent clients and those who are more affluent. Clinical work is still largely a practice of poverty law—civil or criminal. Neither have the schools worked out a way to utilize the practicing bar as part-time teachers—as is done in medicine. Both of these problems are unsolved and not being given enough attention.

As the states enact student practice rules, enabling students to appear in court, there is more attention to preparation of students for clinical work. The rules put the onus for certifying a student on the dean of a law school. This formality encourages attention to what the school should require for certification. This is good because schools are starting to set up a sequence of experiences and teaching situations which precede the privilege of going into court. In so doing schools are also beginning to consider what prepa-

ration a student should have before even interviewing and counseling a live client.

Not much attention has been given to the role of judges as students move into court. As they do so judges are inevitably drawn into the teaching process. They are tolerant of and helpful to students and their teachers, but they must temper this cooperation with an abiding concern that the judicial processs must function quickly and effectively in the interest of the public. As the role of the judge develops he will undoubtedly be drawn into a more explicit teaching relationship with the law school and the bar.

There is, of course, also the question of who the clinical teacher should be and the difference between clinical education and apprenticeship. Viewing developments as they are occurring, we have had the following to say on these points:

> We should emphasize briefly the difference between clinical education and apprenticeship. The former belongs to formal educational institutions. The latter belongs to the practitioner-employer. One cannot substitute for the other, although either or both may be omitted at a price paid in terms of educational benefit (clinical experience) or proficiency (apprenticeship). Proficiency comes from the kind of repetition of a task or tasks on the job which educational institutions cannot provide for any student. Educational benefits can be found and exploited in law school supervised clinical work.
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> The teachers who are and will be clinicians may not be the same kind of personality as the teacher who enjoys the reflective life, research, and who teaches mainly through lecturing. Perhaps the clinician will be more like the practitioner in personality. But he has to combine some of the practitioner's qualities with a desire to teach. He is the counterpart of the ideal classroom teacher who is supposed to combine the qualities of a scholar with a desire to teach. What is needed is as much tolerance at this stage for the practitioner-teacher who falls short of perfection as the tolerance we have developed for the scholar-teacher who doesn't quite measure up. We shall probably find a few practitioner-teachers who are really only practitioners, just as we find a few scholar-teachers who are really interested only in scholarship. And most likely we shall find teachers who fall down a bit on practice, just as their counterparts do on scholarship.

It may then be asked what the legal education of the near future may look like. First, one would hope for a reduction in the total number of years spent in college and law school. If the consideration of higher education reaches the fundamentals touched on at the outset of this paper, this would become a matter of highest priority, although perhaps the most painful for educators to confront.

Six years, instead of the present seven, should be enough time for college and law school. Like some other professional and graduate schools, law schools should require certain courses to have been taken at the college

level. An entering law student should have had certain courses in the social sciences, particularly in political science and public administration. And efforts should be undertaken immediately to have jurisprudence and the legal process made an integral part of these disciplines at the college level. Is there a valid reason for having college students learn how a bill goes through Congress while they remain totally ignorant of judical proceedings and other parts of the legal process? A college graduate ordinarily knows nothing of the organization and selection of juries (on which he will be expected to serve) or of the difference between a civil and criminal trial. Why should not all college students and particularly ones who intend to go into the bar have such knowledge before they enter law school? Of course, a great deal of this needed material simply does not exist even at the law school level, and there will be work for some time to come while the materials are developed and put into use.

There need not be a sharp break between college and law school. Those intending to go into law should be able to take certain basic law courses in their fourth year of college. This would help to ease the transition, and also to make it easier to make the final commitment to continuing into the fully professional part of the curriculum.

The first year in law school should be devoted to the basic law courses, torts, contracts, property, criminal law—those that teach the basic relationships being regulated by law between man and man, and man and organized society. The summer between the first and second year of law school should be devoted to clinical work in interviewing and counseling and to observation of trial work by way of preparation for clinical work. The second and final year of law school should be all clinical, including trial work.

If such a basic reform makes the academics unhappy it will at least serve far better the needs of society for adequate legal services and a profession which is practice and people-oriented. Clinical legal education should help to move higher education in this direction.

COMMENTS:

Discussant

ARLISS L. ROADEN*

Mr. Pincus offers two justifications in support of his case for clinical education. First, it (clinical education) is an important ingredient for human growth and development; and, second, it makes for better trained lawyers and an improved system of justice. He speaks first as an educator, and second as a legal educator. As an educator, I should like to support and elaborate on the notion that students need to be active participants in their education.

For years we, in higher education, have operated on the assumption that the most humane program for undergraduates is one that leaves career options open as long as possible. This assumption has been translated into a two-year (sometimes four-year) program of general education with specialization coming late in the undergraduate program or in post-baccalaureate programs. Research on career development patterns suggests that career decisions are made much earlier in life than we had once assumed was the case. Thus, our efforts at humaneness in leaving career options open may, in fact, be extraordinarily inhumane by forcing students into general education content, and depriving them of content in areas where they want to spend their lives. This problem is especially acute for the appropriate sequencing of clinical content in professional and pre-professional programs. For years, programs in elementary and secondary teacher education have scheduled supervised student teaching during the final quarter or semester of the program. (I note with concern that Mr. Pincus recommends the clinical component of legal education for the final year of law school). In teacher education, students are insisting that they be introduced to some clinical work in elementary and secondary schools early in their undergraduate program. Likewise, prospective college teachers are demanding teaching experiences early in their academic programs, frequently at the expense of valuable fellowships which preclude employment as teaching assistants. The most excited and intellectually stimulated teacher-education students I have ever observed were college sophomores who had been appointed as teacher aides in inner-city classrooms. They were rendering a service to others and coming to grips with the practice (though at an elementary level) of the profession in which they planned to devote their lives.

To summarize this point, Mr. Pincus' thesis that students need to be participants rather than just observers in their own education is sound. I am

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concerned, however, that deferment of the opportunity to participate as a clinician until the sixth year of collegiate education will fall short in filling needs inherent in human growth and development, and, thus, neutralize many of the advantages of clinical education. My preference is to start early and increase the level of responsibility as the student moves through his program. In law, there must be some legal-aide roles in which unsophisticated pre-law students can render valuable services. Early exposure to elementary responsibilities in clinical practice may, in the long run, contribute to openness of career options. It is more humane for a student to conclude early in his education that a particular career is not for him, than to reach such a conclusion at the end of a long, arduous, and expensive program when career options are closed.

MISSION CONFLICTS IN PROFESSIONAL SCHOOLS

Mr. Pincus points out quite vividly some conflicts of mission which professional schools face. These conflicts of mission are fairly recent. Historically, professional schools knew their mission to be the preparation of professional practitioners. They relied on others to generate new knowledge and to research problems related to the profession. In professional education, we depended largely on the behavioral sciences for theoretical bases and new knowledge; medical schools depended on the biological sciences; and law schools looked to the social sciences for similar support. In recent years, social and behavioral scientists have concentrated substantial quantity of their time on refining the theoretical bases and methods of inquiry within their own disciplines, frequently at the expense of applying their science to the solution of problems facing professional practitioners. Consequently, professional schools have developed multiple missions—the preparation of professional practitioners *and* the generation of new knowledge.[1] Mr. Pincus admonishes us that the *primary* mission of law schools is the preparation of practitioners. Other agencies and disciplines, he suggests, are engaged in social and behavioral research, but no other agency or discipline is preparing lawyers.

In discussing the clinical component of professional education, it is generally assumed that clinical training is the sole domain of practitioner training; however, there is also a clinical component in the preparation of research scholars—the research assistantship. Researchers in psychology, sociology and education have advocated the research assistantship as the single most important component of training researchers in their disciplines.[2] In

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[1] There is, also, a third mission of applying practioner expertise to the alleviation of social problems. This mission can be fulfilled to some extent through a well-developed program in clinical education.

[2] *See*, e.g., E. Sibley, THE EDUCATION OF SOCIOLOGISTS IN THE UNITED STATES. (The Russell Sage Foundation, 1963), *and* D. Taylor, *et. al.*, *Education for Research in Psychology*, AMERICAN PSYCHOLOGIST 14, 167-79 (1959).

my own studies of some 4,000 persons associated with educational research, I found that those who had held research assistantships during their academic programs were subsequently two and one-half times more productive of research than those who had not had the benefit of a research assistantship.[3] This knowledge might help us live more comfortably with our multiple missions, rather than viewing them as being in conflict.

THE UNIVERSITY AND COMMUNITY LABORATORIES

As a final observation from Mr. Pincus' lecture, I shall comment on relations of professional schools to the real world of practice. There are, of course, personal relationships of professors and practioners that are important and enriching to both. At the institutional level, colleges of education relate to school systems, colleges of medicine to hospitals, colleges of engineering and business to industrial and business firms, and colleges of law to the courts and other legal and judiciary agencies. Clinical education for practitioners mandates close collaboration between professional colleges and institutions of professional practice. There may be no valid substitute for formal, contractual relations between these institutions. I doubt the capacity of on-campus laboratories and clinics to replicate the range of initial experiences facing practitioners; although, I concede that there may be need for both on and off-campus laboratories and clinics. Mr. Pincus makes his point forcefully that the professional student must spend some of his clinical education off campus. I concur completely. Contracts between universities and off-campus agencies might appropriately specify two-way delivery of educational services for improved professional training for improved teaching and research, for improved professional practice, and for a better society.

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[3] Worthen, B. R. and Roaden, A. L. *The Impact of Research Assistantship Experience on the Subsequent Career Development of Educational Researchers*, Columbus, Ohio; Evaluation Center, The Ohio State University.

COMMENTS:

Discussant

WILLIAM G. PACE*

Mr. Pincus has presented a superb case for the introduction of clinical elements into the education of a law student. As a professional colleague involved in medicine, a field in which clinical responsibility and exposure is not only a desirable element, but an absolute necessity for both the medical student and the future surgeon, I cannot easily separate the clinical aspects of teaching from the "case method." I agree wholeheartedly with the outline for the future which Mr. Pincus has given us.

I would like to make some observations, and perhaps point out some dangerous trends in our present society. At the same time, I will perhaps disagree with one or two points which Mr. Pincus has made. (Nothing could be more disastrous for a physician than to enter into a debate with a barrister as learned and articulate as Mr. Pincus—but I have the singular advantage of having a position on the program which does not allow time for rebuttal—therefore, I feel secure in proceeding.)

Mr. Pincus has stated that the sole purpose of the professional schools is to prepare members of a practicing profession, while preparation of students for graduate teaching involves no clinical exposure. I would like to distinguish his concept of graduate and professional education from mine. I would submit that in the structure of the University, the Medical School and The University Hospital is unique. The University Hospital also fulfills the role of a laboratory which Dr. Roaden mentioned. In the medical school, it is essential to integrate clinical experience with the didactic material. In the graduate sector of the medical school, the residency program trains the practicing surgeon. This program must utilize the maximum of clinical experience and responsibility for the resident surgeon; at the same time, training this young surgeon as a future teacher. The University setting is unique in this respect. True, young surgeons are being trained in many non-University Hospitals; and in fact in several right here in Columbus; *but* in no program other than that of the University Hospital is the primary purpose the training of future teachers *and* practitioners of surgery. If there can be any question that intimate clinical exposure is necessary in this phase of the surgeon's education, then I should like you to reflect on the chilling prospect of having your own gallbladder removed by a surgeon who has never been outside of a laboratory or a classroom!

While we are at this point of the discussion—I would like to take one more step, and perhaps to probe the future of clinical experiences in surgicial education. This is a delicate problem. In many great institutions

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this has been handled with diplomacy, and without danger to the patient. I would suggest as examples the great American Clinics in Boston, Minnesota, Cleveland, and other cities. You all know excellent surgeons who were trained in these institutions, and yet you also know that they did not do their own first operation on the day they left the training program. You also know that in order to obtain the surgical expertise which they acquire in a four-year residency program, they must deal with the emotions, the problems, and the personalities of patients; as well as with the actual performance of surgical operations. At the same time, almost all of the patients in these great clinics are so-called "private patients"—certainly not the indigent patients who have made up the nucleus of many University training programs. Obviously, these surgeons have been trained by close working relationships among the trainee, the teacher or responsible surgeon, and the patient. I bring this example into the discussion only to open a Pandora's Box—what appears to be an attempt to destroy the clinical aspects of surgical education by legislation.

Our goal is to have the finest of medical care as a right, not a privilege for all of our people. The apparent mechanism for achieving this goal, however, is to dictate in ever more rigid terms the circumstances under which medical care can be delivered. These regulations emanating from insurance carriers and carrying the weight of the federal authority through medicare payments, would, if strictly interpreted and followed, and if they became all inclusive for all of our population, perhaps eliminate participation in clinical situations by all "non-certified" surgeons. This could mean that surgical trainees would then be trained entirely by allowing them to observe until they could be certified—then they could begin to operate on patients. Of course, certification is not possible until a minimum number of surgical procedures have been completed by the trainee; the projected theoretical outcome of this conflict is obvious.

Unlike the atmosphere in the law school, in which Mr. Pincus has so clearly shown that the trend is to increase clinical experiences; our colleagues in the legal profession are perhaps pointing the way to elimination of the clinical aspect of the surgical training period. Mr. Pincus in his presentation has given answers to the problems which he himself raised:

> a) The proposed shortening of the curriculum to six years from seven. The medical school at Ohio State concurs completely, and already shortened the medical curriculum to six years from eight.
> b) He suggests increased production of professionals. This medical school has responded to this demand by increasing the enrollment to 216 from 100 over the past few years.
> c) He has suggested increased clinical exposure. I agree completely. The medical school has now involved the patient with the otherwise dull basic didactic course from the first day of the student in medical school.

What then, is a solution for the continued, and in fact increased pro-

duction of surgeons in an environment in which they may not be permitted to operate? I would suggest that the solution lies in dialogue between those responsible for legislation and policy, and those who have been intimately involved with surgical education and surgical standards for the past 57 years—The American College of Surgeons. Obviously, the solution is not an easy one, but as a Professor of Surgery, I am profoundly disturbed by the fact that the trend seems to be in the wrong direction—away from the clinical aspects in medicine. I congratulate Mr. Pincus on his presentation, and agree wholeheartedly with the need for an increased clinical component in all areas of professional education.

INTRODUCTORY REMARKS AT FOURTH SESSION

HARRY W. JONES

This is our fourth and final act, and we are happy to have all of you with us again to see how the play comes out. I welcome with particular esteem the younger members of the profession—for a law student becomes that the day he enters law school—who have stayed the course to this final session of the Centennial Conference.

Tonight's discussion of "The Role of the Universities in Continuing Professional Education" is our concluding session, not only in the sense that it is our last one but also in the sense that the other three would be incomplete without it. For professional education, yours and mine, is but the first stage in a lifelong learning process in which the professional must engage. University professional education, however much enriched by instruction, research and clinical experience, is unfinished business unless followed up by serious and sustained continuing education.

It is often said that the chief distinguishing characteristic of the professions is that each involves the application of learning and an intellectual technique to the ordinary business of life. But knowledge advances and techniques multiply, and today's problems are not the problems of yesterday. How is the conscientious professional to keep abreast of the developments that have come about in his discipline since he left medical school or engineering school or law school with his shiny new professional degree?

The problem characterized by sociologists in terms of "information flow" or "communication system" exists in every profession: medicine, law, engineering, social work—even, in these days, the ministry. The best studies in point are probably in medicine, where the flow of scientific and technological information has been closely examined as a central aspect of the sociology of the medical profession, but we are aware, sometimes painfully aware, of the comparable problem in law.

Any serious study of the "communication systems" of the legal profession would have to take account of at least four factors: (1) the law school case method, an educational technique designed less to communicate present information, which may quickly become outdated, than to develop skill and imagination in the use of future as well as existing legal sources; (2) the existence in law, due primarily to the enterprise of private law publishers, of an extraordinarily complete system of information digesting and indexing, which enables the law practitioner to find what he needs when he needs it; (3) the growth of specialization within the profession, calculated, as in medicine and other fields, to keep the in-flow of new knowledge within reasonably manageable bounds; and (4) the expansion and recent intellectual vitalization of institutional programs for continuing legal education.

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Mind you, I am not asserting perfection or anything like it for these components of the legal profession's adjustment to the problem of information flow. Thus, the case method of law study is increasingly under fire, perhaps because, like Beethoven's last quartets, it is very hard to play. Our legal digests, indexes and citators, remarkable as they seem to admiring professionals in other fields, sometimes lead to the discovery of more useless than useful information. And the increasing specialization of the legal profession is a painful development for those of an older school who like to think of the lawyer as our society's one surviving professional generalist.

Continuing professional education, in law at least, remained for years in about the state of medical education in the pre-Flexner era. There is nothing surprising about that. It is considerably easier to devise effective programs for undergraduate professional education than to establish firm foundations for serious continuing study by busy practicing professionals. Few people have yet realized the extent of the commitment that was made when the new Code of Professional Responsibility of the American Bar Association declared it to be a matter of *ethical* obligation (Canon 6) that the practicing lawyer keep abreast of current legal literature and developments by participating in continuing legal education programs, concentrating in particular areas of practice and utilizing other means of avoiding personal professional obsolescence.

What, then, are the prospects and problems of continuing professional education, and, in the terms of our conference subject, what is the role of the universities in the enterprise? But, first, a word or two about this evening's principal speaker, Mr. Norris Darrell. At first glance, Mr. Darrell would seem to be the prototype of what present day students call an "Establishment" figure. He confesses to a business address at 48 Wall Street. He is a partner of Sullivan and Cromwell, which is one of the law firms our top-ranking Columbia law graduates most want to go to, want to, that is, if they cannot find currently higher status employment at the legal aid society or in a neighborhood law office.

So it is with some surprise that we learn that Mr. Darrell does not fit the establishment stereotype at all. He was born neither in Boston nor on Fifth Avenue in Manhattan but on the island of St. Kitts. He studied law not at Harvard or Yale but at the University of Minnesota. Similarly as to his interests: He is a director of Harper & Row—that was to be expected—but also of Goodwill Industries of New York. He has been prominent not only in the work of the Tax Foundation—which is in the Establishment character—but also in the Council on Foreign Relations and the National Legal Aid and Defenders Association. For years he has been a trustee of the Practicing Law Institute, a pioneering venture in the area of this evening's discussion. Indeed, if Mr. Darrell were not a bigger and

sturdier man than I, I would be tempted to call him a do-gooder in Wall Street clothing.

One of the great men of the American practicing bar, Mr. Darrell is uniquely well qualified to begin our discussion at this final session of the Centennial Conference. He is the President of the American Law Institute, which in recent years has done more than any other institution, professional or academic, towards bringing quality and intellectual excellence to continuing legal education.

THE ROLE OF THE UNIVERSITIES IN CONTINUING PROFESSIONAL EDUCATION

NORRIS DARRELL

It is a distinct privilege to have the opportunity to participate in this Centennial program, but I confess that in accepting the invitation of Professor Pollack, the Chairman of the College of Law Centennial Committee, to speak on "The Role of the Universities in Continuing Professional Education," I did so with considerable reluctance. In these turbulent days when universities are struggling with mounting deficits and new and difficult challenges to traditional methods of education, it may be too much to expect them to give serious attention to the question of their assuming greater burdens than in the past in the field of continuing professional education. Yet on reflection I accepted the invitation, comforted by the thought that the question is of long-run importance and the planners of this program deliberately asked for its discussion.

Logically, it seems reasonable to say that institutions of formal education should have a substantial measure of responsibility for continuing the education of the students whom they educate to pursue the professions. However, that this is not so self-evident is demonstrated by two case histories. Let me start with my profession, the law.

Chronologically, continuing legal education, compared to academic institutions such as this one, is still enjoying its youth. There is some question whether it was born in academia or at the bar. New York University School of Law has laid claim to have started a continuing legal education program for lawyers in 1891 to supplement its course of study for the LL.B.[1] There is a record of post-admission legal education lectures at The Association of the Bar of the City of New York more than fifty years ago. There were occasional efforts under bar association auspices at times elsewhere in isolated parts of the country.[2] A New York lawyer, Harold Seligson, foresaw in the thirties the significance of this branch of professional education and started in New York City a program that resulted in a private non-profit institution known as the Practising Law Institute, one of the leaders today in post-admission legal education. Continuing legal

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* President, American Law Institute; Senior partner, Sullivan and Cromwell, New York.

1 JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION OF THE AMERICAN LAW INSTITUTE AND THE AMERICAN BAR ASSOCIATION, CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY, THE REPORT ON THE ARDEN HOUSE CONFERENCE, DECEMBER 16th to 19th, 1958, at 220 (1959) [hereinafter cited as ARDEN HOUSE I REPORT].

2 THE JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION OF THE AMERICAN LAW INSTITUTE AND THE AMERICAN BAR ASSOCIATION, A STATEMENT OF ITS ORIGINS, HISTORY, DEVELOPMENT AND ACCOMPLISHMENTS (The American Law Institute, Philadelphia, 1966) (Unpublished report in library of The American Law Institute).

education gained substantial momentum at the end of World War II when the profession, working primarily through the organized bar, foresaw the need for refresher courses for lawyers who would be returning to civilian life after having been in the service of their country. A substantial program for this purpose was mounted by the American Bar Association working with the Practising Law Institute. The successes and the frustrations of this effort indicated to the leaders of the bar the need for further intensive development on a national scale of a continuing education program for the profession. A committee of the American Bar Association's Section of Legal Education and Admissions to the Bar, working with a Committee of the Association of American Law Schools and the Executive Council of the Junior Bar Conference, studied the matter. It reported that continuing legal education was a prime need of the profession and recommended that the Association request The American Law Institute, with the cooperation of the American Bar Association, to assume the leadership in developing a national program of continuing legal education. The Institute agreed to undertake such a program under the aegis of a committee of leaders of the bar drawn from the Institute and the Association. The Committee is known today as the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. Its first Chairman was the late Harrison Tweed of New York City, my predecessor in the Presidency of the Institute and the Chairmanship of the Joint Committee.[3]

An initial objective of the Joint Committee was to stimulate the development of programs of continuing legal education at the local level throughout the country. This objective was formulated in the belief that local participation and organization were needed to establish viable programs to which members of the bar would respond. It was appropriate to the legal system of the United States under which the law of each state plays a dominant role within its borders. The Joint Committee's effort got under way in 1947.

Some 10 years later, the first of a series of national conferences on continuing education of the bar to evaluate accomplishments and to chart future courses was held at Arden House in Harriman, New York. Reports to the conference showed that post-admission legal education in 1958 depended in the main on the sponsorship of state and local bar associations which, pursuant to the Joint Committee's original plan, for the most part had originated and administered its programs. There was some university participation. In California, a program had developed at the instance of the State Bar of California which was administered by the University of California Extension as an extension of the University of California School

[3] *See* history of the formation of the ALI-ABA Joint Committee in the 1966 ANNUAL REPORT OF THE AMERICAN LAW INSTITUTE 45 et seq. (Philadelphia).

of Law in Berkeley but which was controlled by the California Bar. A comparable form of organization had evolved in Wisconsin. About this time Harvard Law School initiated a two-week summer program for lawyers which since then has been conducted every three years. New York University School of Law had a graduate program for lawyers seeking to develop specialties.[4]

At this first Arden House Conference, the question was posed to the conferees of a role, perhaps a major role, in post-admission legal education being assigned to the law schools. Speaking to this proposition in one of the provocative addresses was the then Dean of the Harvard Law School, now the Solicitor General of the United States, Erwin N. Griswold. In substance, Dean Griswold's thesis was that post-admission legal education was not a task to which the law schools could or should commit themselves. Law schools, he said, had limited manpower and limited funds and these should be devoted basically and essentially to the teaching of students to be lawyers, to scholarly legal research, and to improving the law. To allocate part of these resources to post-admission legal education would dilute the law school's primary educational objectives, if not frustrate them. Post-admission legal education was a task for others, such as the bar association or university extension, to assume and to administer, at a well-financed level and through a cadre of professional administrators.[5] The final statement adopted at the Arden House Conference reflected his views,[6] though it added:

> Law schools have an important contribution to make to the continuing education of the bar. This contribution should be made without either impairing the independence of the schools or diverting them from their primary responsibility for the education of law students.

In the following years the impact of Arden House I and its final statement was substantial and in the direction that Dean Griswold urged. A majority of the states of the United States, working in the main through their bar associations, instituted, organized, and established professional administrations of continuing legal education to conduct their programs. Thus, at the time of the second Arden House Conference in 1963 there were some twenty-five state administrators of continuing legal education.[7]

A questionnaire prepared for the second Conference elicited information that is particularly meaningful for our discussion. Of twenty-four

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[4] *See* ARDEN HOUSE I REPORT, 205-244 (Appendix F).

[5] Dean Griswold's address appears in ARDEN HOUSE I REPORT, 134-152 (Appendix D).

[6] ARDEN HOUSE I REPORT, xv-xvi.

[7] JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION OF THE AMERICAN LAW INSTITUTE AND THE AMERICAN BAR ASSOCIATION, ARDEN HOUSE II: TOWARD EXCELLENCE IN CONTINUING LEGAL EDUCATION, THE REPORT ON THE SECOND NATIONAL CONFERENCE ON THE CONTINUING EDUCATION OF THE BAR DECEMBER 14th to 17th, 1963, at xxii (1964) [hereinafter cited as ARDEN HOUSE II REPORT].

responding organizations eleven had some affiliation with a university. Of these only one state had an administration initiated and administered by its law schools. Some five were based in university extension divisions. The balance of the eleven were joint enterprises of bar associations and law schools. In the remaining thirteen organizations, bar associations were the dominant forces. It would seem that university affiliation, where it did exist in 1963, was more for purposes of administration than for educational direction. Significantly, but with some exceptions, most of the programs were administered by personnel who were committed to continuing legal education only on a part-time basis and who were not academics.[8] The final statement of Arden House II reaffirmed that the primary obligation to make continuing legal education available to the profession was that of the organized bar and that "law schools have an important contribution to make." It defined their obligation to be "to assist in continuing legal education activities" and added that "universities are urged to share in this responsibility."[9]

Some in the profession, including members of the ALI-ABA Joint Committee, were of the view that the role of the law school in post-admission legal education should be greater than this and they continued to espouse that position. This persistence persuaded the Association of American Law Schools to sponsor a roundtable discussion at its Annual Meeting in December of 1966 on "The Role of the Law School in Continuing Legal Education."[10]

The discussants included a former President of the American Bar Association, Ross L. Malone, a practicing lawyer member of the Joint Committee, Peter F. Coogan of Boston, the Administrators of Continuing Legal Education programs in Michigan and California, E. Donald Shapiro and Felix F. Stumpf, the Associate Dean of Harvard Law School, Professor A. James Casner, the Director of The American Law Institute, Professor Herbert Wechsler of Columbia University, and the Director of the ALI-ABA Joint Committee, Paul A. Wolkin. The discussion was chaired by Dean W. Edward Sell of the University of Pittsburgh School of Law.

A strong case was made for active law school participation. The principal reasons assigned may be summarized as follows: Only the law schools can offer high quality education because they have the most knowledgeable

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[8] ARDEN HOUSE II REPORT, 145-153 (Appendix G). The report aptly characterizes prevailing conditions:

> In almost all instances, the organized state bar association is in full charge or participates to a large extent in the continuing legal education activities. . . .
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> Some state organizations make use of university extension divisions; others do not. Those organizations that work through extension divisions find it advantageous for a variety of reasons, including the sharing of facilities, professional experience, and finances. ARDEN HOUSE II REPORT at 145.

[9] ARDEN HOUSE II REPORT, xxii-xxiii.

[10] A transcript of the roundtable discussion appears in 13 PRAC. LAW., May, 1967, at 6 (Part I), and 13 PRAC. LAW., October 1967, at 6 (Part II).

and experienced teachers, academic independence, research facilities, and the other required educational resources. Moreover, law schools are the ultimate guardians of legal growth and law reform, consideration of which should infuse continuing legal education programs. The dissenters, Professor Casner and Mr. Stumpf, echoed the views of Dean Griswold at the first Arden House Conference.

In his concluding comments, Professor Myres S. McDougal, the then President of the Association of American Law Schools, challenged those who would deny that law schools had a role. He said:

> . . . it has begun to strike me that we in the law schools are, in some measure, losing sight of our major purposes.
>
> The principal relevance of the three years' training that we offer is in its preparation and strengthening of the legal profession for its total performance. To say that our responsibility stops, rather arbitrarily, at the end of three years is just a little absurd to me. The training for the transition from the schools to the profession, the refresher courses, and the provision of appropriate opportunities for specialization all tremendously affect the quality of the total performance of the bar and, hence, the relevance of what we achieve by our initial training.
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> I have been much enlightened by the discussion we have heard. We in the law schools certainly would not want to do anything to diminish the sometimes dubious quality of the instruction that we now offer in the three years of training. I find myself, however, highly sympathetic with the attitudes of Professor Shapiro, Mr. Malone, and others, when they suggest that ways should be found by which we can increase our law school contribution to our total professional responsibility.
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> The great need is for unified planning of the whole experience of the profession in its training for performance of its uniquely public functions. There may be ways, further, for us to contribute beyond the planning function more than we are now contributing.[11]

Since December of 1966 other meetings and other conferences have continued to exhort the law schools and law teachers to participate in continuing legal education. A 1967 National Conference on Continuing Legal Education concluded that:

> Greater interest and involvement in continuing legal education by members of law school faculties would also help to improve the quality of continuing legal education. Law schools should devote more concern and recognition to continuing legal education. Accordingly, every effort should be made by all interested organizations to encourage greater interest and involvement by law schools and their faculties.[12]

The Report of the March 1968 American Assembly on Law and the Changing Society put it this way:

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[11] 13 PRAC. LAW., October, 1967, at 107-108.

[12] COMBINED SUMMARY OF VIEWS OF THE 1967 NATIONAL CONFERENCE ON CONTINUING LEGAL EDUCATION, MAY 20-21 (Washington, D.C. 1967), 13 PRAC. LAW., November, 1967, at 53, 56.

> 7. The necessary growth of continuing legal education depends upon the support of the bar, the law schools and the judiciary. Greater cooperation among participating organizations, improved efficiency, and higher quality should be the aim. Continuing legal education can contribute to instruction in the law schools, and the law schools can in turn improve the quality of continuing legal education, if the relationships between the two are extended and strengthened.[13]

The Report of the October 1968 National Conference on Continuing Legal Education again adverted to the matter:

> A recurring theme at the Conference was the need to interrelate all present levels of legal education and to view the entire educational process as a continuum. This brings up again the appraising of the feasibility and desirability of greater involvement by law schools in post-admission legal education and the integration of continuing legal education and its supporting personnel into the law school structure.[14]

Time and conferences, however, have failed to breach significantly the law school walls. The few established law school post-admission legal education programs have continued as before.

However, activity by agencies of the organized bar has expanded substantially.[15] The character of continuing legal education they offer may be characterized essentially as follows:

The average program is of one, two, or three days' duration; it deals primarily with subjects of popular appeal; it consists of work sessions of two or three hours; its faculties consist for the most part of practicing lawyers; and its pedagogy employs a combination of formats—straight lectures, panel discussions, demonstrations—augmented, in some instances, by audio-visual aids.

Usually, course materials are distributed at the time of a session, infrequently in advance, and not too infrequently afterwards. Materials may be printed, mimeographed or more commonly multilithed outlines or occasionally texts published by the sponsoring agencies; or they may be books

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[13] THE REPORT OF THE AMERICAN ASSEMBLY ON LAW AND THE CHANGING SOCIETY, MARCH, 1968, at 8 (1968).

[14] GOALS FOR CLE AND MEANS FOR ATTAINING THEM, THE REPORT ON THE 1968 NATIONAL CONFERENCE ON CONTINUING LEGAL EDUCATION, 10 (The American Law Institute, 1969).

[15] The 1970 REPORT OF THE DIRECTOR OF THE ALI-ABA JOINT COMMITTEE notes that that "The number of programs being offered, as reported to the CLE Catalog, continues to increase:

Academic Year	Courses Reported
1965-66	319
1966-67	348
1967-68	558
1968-69	670
1969-70	730

1970 ANNUAL REPORT OF THE AMERICAN LAW INSTITUTE, 82 (1970).
CLE Catalog lists reported continuing legal education programs and publications. It is published twice a year by the ALI-ABA Joint Committee.

of commercial publishers. Generally, advance preparation is neither required nor suggested.

The importance of such published materials as have been produced by continuing legal education must be stressed. While the output has not always been all that it should be, books of outstanding quality that surpass those of commercial publishers have come off the presses in some instances.

Audio-visual materials have been tried with varying degrees of success. The advent of cassette packaged audio-tapes has stimulated considerable interest in their use for self-instruction and the California Continuing Education of the Bar, the Practising Law Institute, and the ALI-ABA Joint Committee are producing such tapes.[16]

But, neither the character of the continuing legal education being offered nor its educational methods and devices have satisfied the proponents of greater involvement by law schools sufficiently to make, to their minds, such involvement unnecessary.

A law school type continuing legal education program would, they believe, take on many of the rigorous characteristics associated with law school education—advance preparation, small classes, teaching by student-teacher colloquy, research and writing, and at times examination.[17] Programs at the graduate level for lawyers seeking to acquire skills for specialization are the ones most likely to have a substantial number of these features. There are not too many of them.[18]

This is where the legal profession's continuing education route has taken us to date. Many of us who have been concerned with continuing legal education have on occasion cast an envious eye on what seemed to be a superb program in another profession, that of continuing medical education, from which the bar hopefully might benefit. In discussing that program, to which I now turn, I must rely on "hearsay" sources as I have no personal knowledge or experience in that field whatsoever.

I am advised that all medical specialty boards give special examinations

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16 Probably pioneered by the medical profession, cassettes are gaining acceptance among all the professions. *See*, for example, a recent brochure of the American Dental Association presenting under its auspices, *A New Visu-Cassette Program for Dentists*, produced by Health Information Systems, Inc., of New York.

17 Temple University School of Law presents an Advanced Legal Studies Program. Its announcement for the 1970 Fall Semester lists courses on Corporate Taxation, Pennsylvania Workmen's Compensation Law and Practice, Taxation of Employment Compensation, Trial Techniques —Civil Cases, Fiduciary Management, Drugs and Cosmetics—Products Liability, and Mass Communications Media. Each course involves two hours of instruction a week from September 8 through December 20. An accompanying letter from the Chairman of the program notes that it embraces "new concepts, in the organization of courses on a sequenced basis, and in the granting of Dean's Certificates evidencing the attainment of competence in areas of specialization." George Washington University also has a graduate program in selected subjects for government employees and others.

18 Taxation is a popular subject. Special studies for specialization in this subject were pioneered at New York University School of Law Graduate Program. ARDEN HOUSE I REPORT, *supra* note 1. Boston University Law School also has a substantial graduate level tax program leading to a Master of Laws in Taxation degree.

after five or more years of internship, residency and practice that consist of intensive written examinations which, if passed, are usually followed by oral examinations six months later. Thus, in the specialties, the doctor is forced to educate himself for several years after graduation from medical school. But there is no comparable requirement for the general practitioner.

A list of "Continuing Education Courses for Physicians" for the period from September 1, 1970, through August 31, 1971, is accompanied by an analysis of such programs for that year and the preceding nine years. The analysis indicates that during those years, of the courses reported, medical schools offered 35-60% of the courses, hospitals 9-22% and others the rest.[19] This analysis is by "primary sponsors." Cosponsors are almost as many, indicating a dilution of academic sponsorship. An editorial accompanying a similar list of courses for the preceding year noted:

1. There is a steady growth of medical education at the community-hospital level. This brings the educational opportunities to the doctor where it is part of his daily practice. Programming of this character is increasing. Nevertheless, the point is made that "it remains for continuing medical education at community hospitals to be given a more definite recognizable form, a system of physician education which can be nourished with the latest knowledge and skill from the medical school and medical specialty society system."[20]

2. Referring to the role of the state medical association in continuing medical education, the editorial reports the view prevalent in state medical societies that they have a "strong and clear role to play."[21]

Both of these would seem to militate against a dominant role for the university or medical school in continuing medical education. A statement of "Objectives and Principles of Continuing Medical Education Pro-

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[19] 213 J.A.M.A. 765, 767 (August 3, 1970). A table from which the reported figures are taken shows year by year percentages as follows:

Continuing Medical Education Courses Listed, 1961-1962 to 1970-1971

Year	*Total Courses Reported*	*No. of Primary Sponsors*	*Courses Offered by*	
			Medical Schools	*Hospitals*
1961-62	1,105	206	. . .	. . .
1962-63	1,146	208	626-55%	104- 9%
1963-64	1,264*	267*	760*-60%	163-13%
1964-65	1,569	251	857-55%	265-16%
1965-66	1,641	252	863-53%	351-21%
1966-67	1,608	262	910-57%	338-21%
1967-68	1,830	263	1,000-54%	224-12%
1968-69	1,922	300	1,024-53%	370-19%
1969-70	2,016	323	886-44%	441-22%
1970-71	2,319	303	813-35%	374-16%

* Includes courses offered by 5 Canadian schools not reported in other years.

[20] 209 J.A.M.A. 766 (August 4, 1969).

[21] *Id.* at 767.

grams,"[22] prepared by the Council on Medical Education of the American Medical Association, offers some clarification of the first point. The introduction (page 1) states:

> The educational implications of reading the medical literature, consulting with colleagues, and attending medical society meetings are significant, but they are under the direct control of the individual physician. The enormous and increasing bulk of medical literature on even relatively restricted subjects makes difficult the maintaining of a current knowledge by this means alone. The routine medical society meetings are often of necessity not primarily educational.
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> Postgraduate programs by hospitals, medical schools, and medical societies, on the other hand, involve groups of people and educational techniques having close analogies with undergraduate and graduate medical education. All three phases of medical education may involve the same educators. It is with such programs—formal courses and regional hospital-medical school cooperative educational efforts—that the Council on Medical Education hopes to be of assistance.

A quite critical view may be obtained from *The Doctors*,[23] published not too long ago. Perhaps I should refrain from mentioning this book for the same reasons that I have cited no book about lawyers. Perhaps doctors would consider it too unreliable and sensational to be referred to here. Nevertheless, without vouching for its accuracy, it may be appropriate to refer to it for whatever it may be worth, since it reports serious criticism of continuing medical education from within the profession. The author puts it bluntly: ". . . the continuing education of the American doctor has been a failure." He gives the following reasons.

Continuing medical education offers courses that are "packaged-seminars," of but one or three days in length rather than traditional continued instruction on a weekly basis; it is spasmodic and sporadic rather than sequential and purports to make available instant medical knowledge. Some of the education borders on the frivolous because of the environment, the medical convention, in which it takes place. A report sponsored by the American Medical Association stated it succinctly when it warned that "conferences and cocktails are not substitutes for a good curriculum." Qualitatively, courses have been criticized as lacking sophistication, and being impractical, disjointed, and too elementary or too esoteric. Curriculum has been criticized as being aimless and lacking cohesion and direction. Part of the failure is attributed to a "Town and Gown" syndrome reflecting "a pathological antagonism between the medical school and the practitioner." The practitioner is frequently cut off from the scholarly as-

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[22] As revised in 1969, Chicago. At its meeting in June of 1970, the House of Delegates of the America Medical Association formally adopted the Council's statement of Objectives and Principles which has now been republished under the title "Essentials of Approved Programs in Continuing Medical Education."

[23] M. L. GROSS, THE DOCTORS (1966), 143-148. For another critical view, *see* M. CRICHTON, *The Miseducation of Doctors*, The New York Times, October 16, 1970.

pects of medicine and the teacher exhibits a similar insularity for his own reasons. One physician is quoted as saying that " 'Unlike education at the medical school level, there is no central authority with the responsibility to stimulate, develop and coordinate the tremendous effort necessary to assure success, and to evaluate the results.' " Another is quoted as saying that "[c]ontinuing education's current lack of 'a long-range, organized, sequential plan of participative learning,' is the result of the absence of a 'modern curriculum'."

The only hope for the future, the author reports, is founded on a greater role being assumed by the medical schools. In the words of one of the medical authorities quoted, no solution of the problem is feasible except in terms that "[e]ach physician must remain always a member of the medical college. . . . Closed-circuit television, travelling teams of medical school instructors, even publications, do not keep the practicing physician young in his learning. I want the practicing physician to remain an integral part of the chosen source of his profession . . . at once a member of the college's faculty and of its student body.' " With this there is a suggestion that the medical profession require for continued certification a specified number of hours devoted to continuing education each year.

If the results of the survey reported by the author are valid, continuing education in medicine will be successful only to the degree that it becomes closely identified with and a part of university medical school education. This comes out to about the same position that many concerned with continuing legal education have advocated.

Essentials of the pattern of continuing education in law and medicine prevail in other professions. Thus, professional associations, national and local, are the prime moving forces in the organization, sponsorship, and conduct of programs in veterinary medicine,[24] accounting,[25] and architecture,[26] the role of the university being secondary or nonexistent.

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[24] Report submitted for review by The American Veterinary Medical Association's House of Delegates in June, 1970. The report quotes Professor Cyril O. Houle of the University of Chicago to the effect that " '. . . the *professional association* crowns all other efforts at continuing education and bears the chief collective responsibility for it.' " *Id.* at 16. The report suggests "State Directors of Continuing Education." *Id.* at 18. *See also* February 1, 1970 issue of the Continuing Education News published by the American Veterinary Medical Association.

[25] American Institute of Certified Public Accountants' catalog of *1970 Professional Development—Courses, Seminars, Lecture Programs, Training Programs, Individual Study Programs.* "If the growth of this program continues to be impressive, credit must be given in large measure to state societies and local organizations of CPAs throughout the country. For although the American Institute assumes principal responsibility for technical preparation and revision of professional development materials and overall administration, the program can be successfully implemented only with the active cooperation of state societies." *Id.* at 1. *See also 1969-70 Annual Catalog, Continuing Education Program of National Association of Accountants.*

[26] *Memorandum* (March 31, 1970) to All State Organization Presidents, All AIA Chapter Presidents from AIA Joint Committee on Continuing Education Re State Organization/Chapter Participation in the AIA Professional Development Program. "The AIA Professional Development Program (PDP) is providing continuing professional education opportunities to members of the profession in the form of one and two day seminars developed under the guidance of the

A novel view was proposed some years ago in an engineers' report. It placed the primary continuing education burden on the employer but went on to caution that "[c]olleges and universities as well as the professional and technical engineering societies must assume a much greater role in meeting the problem of technical obsolescence."[27]

In dentistry, it appears that much if not most of its continuing education is based in educational institutions[28] but its episodic and short-term character suggests a kinship with the programs in law and medicine.[29]

On the other hand, social workers,[30] church workers,[31] nurses,[32] and probably pharmacologists,[33] are substantially, if not completely, dependent on the university or their professional schools for continuing their professional education.

What may we glean from this brief survey of continuing education in the professions?

First. Responsibility for the continuing education of a profession is in varying degrees shared by its professional associations and its professional educational institutions.

Second. However, the more a professional association is a dominant force in a profession, the greater the likelihood that it will play a dominant

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Joint Committee on Continuing Education. Many chapters have written to ask about the details for participating as a host chapter. The purpose of this memorandum is to explain how this can be accomplished and under what conditions."

27 PEI Survey Report, *Continuing Education of Professional Engineers*, at 5, conducted by Professional Engineers in Industry of the National Society of Professional Engineers (March, 1966). "Based on the results of this survey, it is the belief of the Professional Engineers in Industry Committee on Continuing Education, that the principal burden lies with the employer. It is the employer who can make time available to his engineering employees to pursue continuing education programs. It is the employer who can organize and conduct continuing education programs where none are availabe in the community. It is the employer who can supplement programs offered and conducted by local colleges or universities. It is the employer who can help defray the engineering employee's expenses in pursuing continuing education programs. And it is the employer who, through pay increases, promotions, transfers or increased responsibilities, can help motivate engineering employees to participate in continuing education programs." The report shows that 35% of engineers responding to a questionnaire had completed in a five-year period continuing education programs organized and conducted by colleges or universities, a much higher percentage than would be true of lawyers. The percentage for company organized and conducted programs was 36%, and those of professional societies 14%. *Id.* at 17-19.

28 Continuing Education, *Course Listings for October, 1970 through January, 1971*, 81 J. AM. DENTAL ASSOC. 701 (September, 1970); 36 J. AM. COLLEGE OF DENTISTS 149 (July, 1969).

29 Barker, *Administration and Evaluation of Continuing Education Programs*, 36 J. AM. COLLEGE OF DENTISTS 171 (July, 1969); Darby, *The Dentist and Continuing Education—Attitudes and Motivations*, 30 J. AM. COLLEGE OF DENTISTS 165 (July, 1969).

30 A superb report on continuing education in this profession is D. Miller, *Continuing Education Programs of Schools of Social Work: Report of a Survey* February, 1969 (published by the Council on Social Work Education, New York). The Council publishes *Exchange*, a newsletter on continuing education in social work.

31 *Study Opportunities for Professional Church Workers, 1970*, (published by Council Press for the Department of Ministry, National Council of Churches, New York).

32 Barritt and Ohliger, *Continuing Education*, 69 AM. J. NURSING 2170 (October, 1969). Lack of financing, however, is causing a decline in the number of programs.

33 *See* Bulletins of The Philadelphia College of Pharmacy and Science.

role in the continuing education of the profession. This tends to dilute the role of the universities and their professional schools.

Third. Nevertheless, a professional association's continued critical evaluation of its continuing education programs and policies points invariably to the need for greater involvement and participation by the educational institutions of that profession.

Fourth. Leadership in bringing about such involvement most often comes from the professional associations, seldom from academic institutions.

So much for past history. Let us now consider the future. I know no one who would say that all continuing professional education should repose in the universities. I certainly would not. There should be no monopoly in any organization or group. There is an approprate continuing education function and responsibility for all segments of a profession. The following signficant functions of continuing legal education are illustrative:

It should train recent law graduates in the skills of practice. (The "bridge-the-gap" function.)[34]

It should afford an opportunity to keep current. (The "keeping-up" function.)

It should afford an opportunity to upgrade professional skills. (The "freshening" function.)

It should afford an opportunity for education for professional advancement, as desired. (The "new skills" function.)

It should offer opportunities for retraining in lost skills, where needed. (The "refresher" function.)

It should offer opportunities for a broadening of the professional base —to learn about societal developments, other disciplines, and professional and public responsibilities. (The "public responsibility" function.)

Finally, it should offer an opportunity for training for specialization. (The "specialization" function.)

Continuing education under the aegis of a professional association or other organization can perform some of these functions well, including particularly the "keeping-up" and "public responsibility" functions in subjects where the base of professional interest is fairly broad. Periodical literature, books and other publications of professional organizations, and more recently cassette packaged audio-tapes, are superb media for keeping-up through self-study. Practitioners, especially those involved in bringing about new developments in a profession, are logical candidates for writing up those developments and teaching them to their fellow practitioners on a short-term basis.

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[34] *See* ALI-ABA Joint Committee on Continuing Legal Education, *Meeting the Educational Needs of the Newly Admitted Lawyer—A Proposal for General Practice Courses* (The American Law Institute, 1968).

The discharge of most of the other continuing education functions, however, is more demanding in terms of time required, analysis involved, program structuring, preparation of written materials, and teaching. In these, greater participation by the professional educator, the academician, is needed. Moreover, the active academic entity involved should be the professional school rather than any other division of the university.

We should thus have a continuing education system wherein the professional association working through its members and the professional school working through its teachers are both essential components. From this perspective and cognizant of the varied functions to be fulfilled, what then should the future role of the university working through its professional school be in professional continuing education?

It has been suggested that, if the continuing education function of the professional school is fully assumed, it will be of a dimension substantially greater than its function of educating for the profession. This is because the student body and curriculum in the latter instance are finite and circumscribed by the limited number of years of study required for a professional degree, whereas the only limit to continuing education's student body will be the number of members in a profession. Moreover, the curriculum will be confined only by the limits of the profession's knowledge and it will probe beyond such limits to develop new categories of professional service, with its duration measured by the practitioner's life span. If these almost limitless boundaries are accepted, the commitment by professional schools to continuing education might well result in its becoming the major educational function of the professional school.[35]

Such a commitment would not presume, however, that each professional school must offer a broad spectrum continuing education curriculum. To achieve maximum utilization of limited resources, each professional school would determine the particular continuing education functions it should assume in the light of its special competence and the needs of its potential student body of practitioners, and would limit its role accordingly.[36] For example, in an urban center having a number of universities, each of the schools in a given profession might assume responsibility for education in a different specialty.

Moreover, each school could tailor its units and periods of instruction to accommodate the subjects it teaches and the professional community it serves. Regular semesters might prevail where the program involves several hours of instruction a week.[37] A residential program might entail

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35 *Cf.* I. F. REICHERT, JR., THE FUTURE OF CONTINUING LEGAL EDUCATION: LAW IN A CHANGING AMERICA 182 (1968): "It is not incautious to predict that post-admission legal education, rather than initial law school training, will achieve a place of predominant importance in the life of the profession."

36 *Cf.* A. Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 416-420 (1921) This study of the legal profession was financed by the Carnegie Foundation.

37 *Supra* note 17.

several weeks of intensive study. There would be room for much interesting experimentation.

The university embarked on continuing education for the professions would provide physical plant for this purpose—classrooms, library, and where appropriate, dormitory and dining facilities for in-residence programs, the theory being that motivating students to adhere to the highest academic standards in pursuing continuing education would be facilitated by conducting that education in an appropriate academic environment. Of course, a stable academic community is presumed, an assumption which if untenable would render our discussion academic.

However, it is recognized that the university continuing education program cannot and should not be limited to a campus setting. It must employ means to make its program available to all the practitioners in its area. This may require an itinerant faculty or use of facilities that today's technology has made possible—television and radio, audio-visual materials.

Hopefully, appropriate provision would be made for opportunities to participate in relevant research, since this can serve the same educational function in post-admission education that it serves in professional schools at present. On the one hand, practitioners may tend too often in their practice to use obsolescent research techniques; on the other, practitioners, given reasonable research opportunities in the university setting, might bring to them new and practical insights of significance.[38]

An essential element of any continuing education program in professional schools should be education for public and professional responsibility.[39] The university is particularly suited to do this. Its success would become a signal contribution to society.

It is apparent that, to participate in continuing professional education as fully as above suggested, the professional school will need to be expanded. I do not here refer to mere physical plant. Such financial assistance as is mustered to start a continuing education program should be devoted initially, and perhaps for a time to come, to faculty recruitment, development of materials and curriculum, and research. Existing personnel, we have been told with some force, are subject to too many demands to be burdened with responsibility for continuing education. It is to be hoped, however, that some of them can be recruited for continuing education or at the very least that they will assist in recruiting and training faculty to meet the high standards of the academic institutions they will serve. However, it is clear that some who will be teaching in continuing education will necessarily have to be a different breed of teacher because of the different needs they will be required to meet, and investment will

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[38] *See* Wolkin, *From Arden House, 1958, to Boulder, 1968*, 41 U. COLORADO L. REV. 328, 334 (1969).

[39] *See* ARDEN HOUSE I REPORT, 18-39; Wolkin, *supra* note 38.

be required for special teacher training programs. Similarly, the teaching materials will be of a different nature and their development will require a substantial financial input.

The ultimate full participation by professional schools in continuing professional education along the lines envisaged by its supporters has much to be said for it and it may be the wave of the future, especially if, as mentioned later, continuing professional education is subjected to an accreditation process or if an element of compulsion is imposed on professional practitioners to continue their education. But granting that this is desirable, it seems probable that progress can only be made slowly. The main difficulty of expecting too much too soon lies not only in the current preoccupation of universities with pressing problems in other areas but also in the financial problem and in the problem of motivation of professional practitioners to make full use of opportunities made available to them. Thus far, despite the greatly increased interest in continuing professional education that has developed during recent times, a vast number of practicing lawyers most in need of continuing legal education still fail to seek it, and I suspect this may be true also of other professions. Some, who learn better through their eyes than their ears, may feel they can accomplish what they need by self-study; but others simply lack the motivation—the compelling need to become better equipped if they think they can get along without it—especially if it costs money and interrupts their practice. But this attitude should change as continuing professional education programs become better and more attractive and as practitioners increasingly come to recognize they are well worth the cost in time and money.

In the legal profession, motivation of practitioners may well be further stimulated by the recent adoption by the American Bar Association and an increasing number of states of a new Code of Professional Responsibility (or rules of ethical conduct), which expressly codifies the rule that "A Lawyer Should Represent A Client Competently" and which emphasizes the importance of continuing legal education. Motivation would be stimulated even more by adoption of a policed requirement that a professional practitioner must continue his professional education as a condition to continuing his license to practice.[40] However, adoption of the latter measure is likely to be dependent on appropriate action by the organized societies representing the profession, which in turn depends upon the support of the profession or at least its leaders.

I have little doubt that if the universities were willing to undertake to

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[40] *See* Dalton, *What Is the Position of the American Association of Dental Examiners on Continuing Education as a Requirement for Re-Licensure*, 36 J. AM. COLLEGE OF DENTISTS 186 (July, 1969); McCallum, Jr., *What Is the Attitude of the American Association of Dental Schools on Continuing Education as a Requirement for Re-Licensure*, 36 J. AM. COLLEGE OF DENTISTS 188 (July, 1969); Gossett, *The Future of Continuing Legal Education*, 55 A.B.A.J. 132, 133 (1969); Segal, *The Goals of CLE as Viewed by the Organized Bar*, 13 PRAC. LAW., October, 1969, at 13.

provide the benefits of the full scale continuing professional education that has been suggested for them, the question of financial support would not in the long run be an obstacle. While financing of continuing professional education programs has been a problem in the past and may for a time continue to be, those schools in the legal profession that have entered this field have apparently had no trouble in getting lawyer students and indeed no continuing education program of any dimension in the legal profession has yet had to be terminated because of a lack of funds. As professional practitioners increasingly recognize the importance of continuing their professional education and are willing to pay substantial charges for it, as many do today, it seems reasonable to believe that the financial problem can be overcome.[41]

But whatever may be said about the proposed full scale university participation in continuing professional education, the essential need at this time, in my judgment, in each profession, is by one means or another to promote increased participation and cooperation between the practicing members of the profession and its professional schools in the planning, organization and conduct of continuing education programs. This might be done, at least partially, through the organized societies of the profession in order to provide coordination and to avoid duplication of effort and unnecessary rivalry. Practitioners could offer important guidance in determining the educational needs of the profession that might be met through the professional school. In appropriate instances the practitioner's expertise should be availed of in teaching and in developing classroom materials. Academics in turn could offer guidance in the conduct of continuing education programs conducted by professional societies.

Close association and coordination with the professional association are desirable for yet another purpose. Professional continuing education, to attain the status and quality of professional education desired, may eventually need to submit to an accreditation process.[42] This will mean developing and applying standards for accreditation. It may be necessary also to accord some form of recognition to those who submit to a serious academic regimen to improve their proficiency.

In concluding may I express my deep appreciation for your attention. I suspect some of you, after listening to what I have said, would wish—in words recently used in another connection by Dean Charles Galvin—that "the whole dismal enterprise might disappear into a dank, miasmic, myxomycetous sump." To them I would suggest that the stubborn questions of responsibility involved simply will not disappear.

The universities have a responsibility to society to fulfill their function

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41 *Cf.* Manning, *Financial Anemia in Legal Education: Everybody's Business*, 55 A.B.A.J. 1123 (1969).

42 Perhaps existing accreditation of professional schools will include their continuing education programs.

to educate. They have educated the professional and historically have played at least some part in his continuing professional education. At the very least, I submit, they should participate more fully than in the past in continuing professional education in order to enrich and enlarge the offerings available to the professions and to provide more adequate and complete and better disciplined continuing professional education programs. This is especially needed in my profession during times when the law is undergoing change and new fields of practice are being developed. This in varying degrees is true of all professions today.

Our times suggest that the professions may not be meeting fully their responsibilities to society and that this failure may be attributable in part to educational inadequacies and obsolescence. If that be the case, is it not as much the duty of the universities as it is of professional practitioners and their organizations to do what they can to remedy the deficiency? Together, the universities and the professions should rise to this challenge.

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COMMENTS:

Discussant

WILLIAM E. HURLEY*

It is a privilege to participate in The Ohio State University Centennial College of Law Program and to respond to Mr. Darrell's excellent presentation on the role of the universities in continuing professional education.

My own experience in this field has been largely concerned with university developed and presented management development programs offered to executives from business or public enterprise. Currently, I am involved administratively with the continuing education program of the College of Administrative Science of this University, designed for executive personnel in business and government, for professionals in the field of social work and for labor union members and their organizations. It is from the point of view of these experiences that I would like to direct my remarks.

One of my good friends, Dean James R. McCoy (Ohio State University) is fond of observing that the life of any administrator is one of a mad race between retirement and obsolescence—and that the manager is indeed fortunate if the race ends in a photo finish.

This is just another way of saying that the central fact of modern society is the accelerating pace of change and the unprecedented increase in the rate of accumulation of new knowledge. Change, of course, is not new. What is different now and probably for the future is the increasing rate of change—in terms of technology, in terms of social and economic change and in terms of the fast growing size and complexity of organizations. All these factors exert growing pressures on professional administrators in every field and in all organizations to seek better, more effective responses.

Each year we spend increasingly larger sums on higher education. Assuming no major change in approach by the institutions of higher education, it is clear that this investment will need to be accelerated just to stay abreast of student population growth. At the same time this investment in the individual will surely depreciate as a result of the knowledge explosion unless steps can be taken to prevent or slow intellectual obsolescence. While there is no simple or complete answer to winning the race between professional obsolescence and retirement, certainly some contribution can be made through a systematic program of continuing education providing life long learning opportunities for adults for application in both their professional and personal lives.

Dr. Lowell R. Erlund, Dean, Oakland University, speaking at the University of Nevada last spring remarked that professional people above all

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others should be most amenable and responsive to the need and opportunities for continuing education. He added parenthetically that universities have not been notable, however, for their success in imbuing their products with the idea that continued professional development must be a systematic course of action in the professional's future. Yet for a number of reasons much of the student's education may need to take place over the years after completing his degree work. For of that which is learned and relevant much is forgotten, much is soon obsolete and much of the knowledge which he will need is not yet known.

The instituion of higher education, it is assumed, seeks to serve its various publics through its limited relevant research and instructional resources. If it views education as a lifelong process it must seek to serve as one of its major publics its graduates and others who no longer attend school or college as a major occupation. The needs of this group, for upgrading, updating and improving competence differ in good part from those of younger full-time university students. Thus, there is a considerable range of program activity that may be undertaken by universities in continuing education and there are strong pressures from some segments of the community demanding that the university provide such programs. The question is not whether the university should provide such service but rather what objectives and clientele should it serve and how should it best serve them. The university must decide the role that it will play in continuing education, the nature and degree of commitment that it will make and the type of administrative organization that it will use in operating such programs.

A position paper of The Division of General Extension Association of Land Grant Colleges and State Universities presents a general concept of university continuing education as both philosophy and function. As a philosophy, university continuing education sees the campus as a community of scholars making itself as useful as possible to the total society from which the institution draws its inspiration and support. As a function, university continuing education seeks to identify public problems and public needs, to interpret these concerns to the university, to focus university skills and resources upon them and thence to translate university insights into educational programs.

At The Ohio State University a major commitment has been made to the maintenance of a significant continuing education program as evidenced by the level of participation of faculty and participants, by the existing administrative organization and by the recent completion of a multimillion dollar Center for Tomorrow which is the main support facility for on campus continuing education. At present, the University organizational approach to continuing education as a function is to centralize policy and decentralize operation of most programs to the colleges. Thus, while a

few continuing education programs are conducted at the university level, most of the programs are developed and presented by the individual colleges—Engineering, Medicine, Law, Pharmacy, Administrative Science, etc., and the bulk of these programs are continuing professional education programs.

Since operationally, continuing education is decentralized at Ohio State, just as the University must decide on the role it will play in this field, so too must the individual colleges decide as to the extent of their participation in terms of their related publics. A positive decision to engage in continuing education in a significant way calls for, in my judgment, (1) commitment on the part of the faculty as the key resource to be actively involved in continuing education, (2) design of clear objectives and policies, and (3) establishment of an organization to implement such objectives, promote continuing education as a function, to work closely with clients and to assume the administrative, logistical and coordinative tasks that are required.

Continuing Education has had a substantial development in the College of Administrative Science and its predecessor, the College of Commerce and Administration. About two years ago, The College of Administrative Science was created as a successor to the former College of Commerce and Administration as a result of the university academic reorganization. The Division of Continuing Education which had been established in 1960 as part of the former college retained its identity in the new one. Importantly to continuing education the mission statement of the new College states that its goals are "educating and training future and *present professional practitioners*, and teachers and researchers in the related areas, while pursuing research to generate increased knowledge. . . ." Included among the College's detailed objectives is the statement that the College accepts responsibility for ". . . (6) enriching and enlarging of the College's continuing education program."

The College's Continuing Education Committee widely representative of the faculty has set forth goals and principles of operation for the continuing education program of the College in the form of a statement of *Objectives, Policies and General Procedures*. The general objectives paragraph states that: within the educational goals of the University and the College, it is the objective of this area to provide university level education to those segments of society relevant to the college's areas of knowledge. This shall be done in such a manner as to:

1. Maximize educational service, not otherwise available, to business, labor, government and social service organizations.
2. Best utilize the limited and specialized resources of the college consistent with its other goals.
3. Disseminate the newest knowledge as it is constantly refined by the research activities of the college.

4. Link the college to the community it serves by cooperation with various education-oriented groups.
5. Reflect credit and prestige on the university, the college and its faculty.
6. Provide feedback to the college of significant developments and results.

The Continuing Education Division of the College is presently organized into five major program areas—*Business Management Programs* such as the Executive Development Program and others for the professional advancement of managerial personnel. *Contract Programs* in logistics and procurement management offering non-credit short courses in logistics management under contractural relations. *Labor Education and Research Service*—offering programs on campus and in communities throughout Ohio for labor union members and their organizations and conducting research in industrial relations to improve the quality of labor education. *Public Administration* continuing education programs for administrators of public enterprise particularly at the state and local government levels and the *Continuing Education Program of the School of Social Work* offering continuing professional education for social work organizations.

A general summary of the continuing education activities of the College during the fiscal year of 1970 lists a total of 108 programs attended by 9,953 participants. Sixty faculty and professional staff were employed full time in the Division of Continuing Education. Fifty-four professors in the College participated in the development of and instruction in those programs while thirty-three faculty of other colleges in the university taught in these programs.

The continuing education organization of a university or college can operate in various ways. It may, for example, be an autonomous extension division which functions as a parallel unit to the academic organization providing program development and instruction directly to clients. It may operate solely as a coordinating unit through which faculty can interface with clients in the development and presentation of programs. Or more likely it may function in terms of some combination of these extremes. However it operates it must provide a responsible point of contact at the university for continuing education program sponsors and offer access to professional program design, coordination, instruction and evaluation. The important thing is that it function to expediate the transfer of university scholarship into practice and knowledge of the problems and know-how of the practitioner into scholarly research and instruction.

While we attempt to do this in various ways, we have found advantages in our continuing education program in having a professional staff trained both in the substantive or professional area and in modes of continuing education to work with faculty and client during both program development and presentation. Among the advantages in addition to facil-

itating faculty-client relations are interchange of program techniques, more effective utilization of institutional resources such as instructional media and conference facilities, more effective program administration and better development of the short term learning experience.

In the Business and Public Management areas most of our continuing education efforts is toward intensive, integrated residential programs of about five to ten days in length with an instructional day of about five hours. In the labor studies field our Labor Education and Research Service offers a long term non-residential Union Leadership Program, short courses and week long institutes. These statewide programs are conducted both on campus and elsewhere in the State. All of our programs are non-credit. We do not presently give grades or pass formal judgment on work performed. Such non-credit professional education can be tailor made to the educational needs of the group. It is responsive to change and immediate in providing an effective educational product.

In summary, I would like to emphasize the importance of a careful definition of objectives and policies of continuing education and the establishment of a professional continuing education organizational unit in the successful functioning of a professional continuing education program. This management approach should strongly assist in providing a fruitful environment for continuing professional education. Such an organization can provide the coordinating mechanism for faculty to work closely with clients to determine real educational needs and assistance in designing a meaningful learning experience. It can encourage the best resource people among the faculty to instruct in the program. It can administer the program providing close attention to every detail so that the instructional faculty are provided every assistance. It can review and evaluate programs to provide feedback to the faculty for subsequent improvements. It can, importantly, maintain *continuing* relationships with sponsors whether they be associations, companies or government agencies. It can do these things effectively and economically.

COMMENTS:

Discussant

ZOLMAN CAVITCH*

I am neither a professional educator nor a dedicated participant in any bar association. So when I received Professor Pollack's flattering invitation to be a part of this program, I found it necessary to do some reading. I read the Arden House I and II Reports, the transcript of the 1966 Round Table Discussion, referred to by Mr. Darrell, a few law journal articles, and a number of annual reports. My general reaction was, and is, that a great deal of unnecessary soul searching has been expended in debating the law school's role in continuing legal education.

It seems to me that without the dubious benefit of unified planning, of a control organization to establish and maintain a single set of standards and curricula, without, in brief, a *single* answer to the question of whether continuing legal education is the primary responsibility of the bar or of the law schools, continuing legal education has done very well. Perhaps not well from the standpoint of what a few gifted and motivated planners, sitting in lofty judgment, would conclude that lawyers *ought* to want, but very well from the only meaningful standard that can and should be employed in this area: What do lawyers in *fact* want, what are they willing to *pay* for, what will they take *time* out of a demanding schedule to attend? From that standpoint, continuing legal education has done well. And it has done so, most importantly of all, irrespective of whether the program has been initiated and sponsored primarily by the bar or primarily by the law school. Judging solely from my admittedly limited experience, the identity of the sponsor has no discernible effect on the quality and content of the program. And I suspect that this is true because in all instances, it is the practicing lawyer who is the customer, and the customer has the right and the power to get the quality and the content which he wants—no more and no less.

As indicated by our Chairman, my involvement with continuing legal education has been solely as a lecturer with four different institutions, the Ohio Legal Center Institute, headquartered here in Columbus, the Institute for Continuing Legal Education, headquartered in Ann Arbor, Michigan, the Annual Tax Institutes sponsored by the Cleveland Bar Association, and since 1954, as a lecturer in one of the classes given by Case-Western Reserve University Law School in its evening program for lawyers. Each of these institutions is differently sponsored, but each one provides programs which are strikingly similar in most material respects. Let us take a closer, but brief, look.

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* Senior partner, Stotter, Familo, Cavitch, Elden & Durkin.

The Ohio Legal Center Institute operates solely in Ohio. It is the major continuing legal education institution in Ohio. It is a separate, nonprofit organization which was created and is maintained under the joint sponsorship of the Ohio State Bar Association and the Ohio State University College of Law. Its physical plant is located right on the University campus, and it has easy access to the Law School, its faculty, and its facilities. Its principal subsidy, however, comes from the Ohio State Bar Association, and it is probably fair to say that the Bar Association is the senior partner in this joint sponsorship. I am aware that in the early days professors were generally reluctant to participate in the various programs. Now, however, with the growing popularity and success of continuing legal education programs generally, many professors, like many practitioners, ask for the opportunity to participate.

The Institute for Continuing Legal Education, in Michigan, is very much like the Ohio Legal Center Institute. Although most of its presentations are in Michigan, it also conducts programs outside of the state. The Michigan Institute, like its Ohio counterpart, is a nonprofit organization which was created under the joint sponsorship of the Michigan Bar Association, Wayne State University Law School and the University of Michigan Law School. Unlike its Ohio counterpart, however, the Michigan Institute is very closely linked with the University of Michigan Law School. It is housed in the same building, its director is a professor at the Law School, and many of its expenses are borne by the Michigan Law School. It has very easy access to the Law School faculty. Probably for this reason, it has made somewhat more extensive use of law school faculty personnel as lecturers, particularly in the early days, but even here the majority of lecturers have been practitioners.

The continuing legal education program at Case-Western Reserve University Law School is more in the pattern of the traditional law school curriculum. It is not a series of two- or three-day institutes. Rather, it consists of evening classes, on a semester basis, conducted right at the law school. It is entirely a law school project. The subjects presented, however, and the content of most of the courses, reflect the specific needs of the practitioner. Thus, for example, during the current semester, seven courses are offered, including "modern real estate transactions," "estate planning for lawyers," "labor arbitration," and similar, practice-oriented courses. Despite the fact that the program is directly a part of the law school, five of the seven instructors are practicing lawyers.

By contrast to the other three institutions, the Annual Cleveland Tax Institute is entirely a project of the Bar Association. It is sponsored, planned, organized and staffed by a committee of the Cleveland Bar Association. Indeed, it is rather jealously guarded by the sizable tax bar of Cleveland. Although it has no law school affiliation whatever, the quality

of its presentations is just as high as in the other institutions. In fact, one of the problems of management is to keep a few of the perennial lecturers from becoming too erudite.

In comparing all four of these institutions, I am impressed by the similarity in intellectual level at which the programs are pitched, the bread-and-butter aspects of choice of subject matter, and the relative mix of professional teachers and practicing lawyers. The sponsorship does not seem to affect these important attributes. I would guess that the sponsorship is determined in each case by the availability of leadership in the particular community at the time when the need for continuing legal education is manifested sufficiently strongly by the customers, the practicing lawyers. In many cases, the Bar has supplied that leadership. In appropriate cases, the Law School has filled a void. In all cases, the identity of the sponsorship and the content of the program is determined by the local market place, by the interplay of supply and demand. And that, I submit, is the way it ought to be.

CONCLUDING REMARKS AT END OF FOURTH SESSION

HARRY W. JONES

We have been given much to think about tonight, as at each of the other three sessions of this Centennial Conference, and I do not want to prolong our session unduly. Let me just throw in a footnote concerning what seems to me a most intriguing phenomenon in continuing professional education, that is, the rise and expansion of programs for the postgraduate education of judges, particularly newly appointed or elected judges. One of the liveliest educational experiments I know of is the National College of State Trial Judges, which went into full operation in 1964 and has already developed excellent materials and effective instructional patterns along graduate seminar lines. Appellate judges, too, are taking increasing advantage of the opportunities offered to them for intensive summer study at special seminars conducted at New York University and, more recently, at the University of Alabama.

I had the very real pleasure of taking part in one of these judicial seminars about a year ago in Seattle. Because of the pressures of judicial business in the states of Washington, Oregon and Colorado, each of the three states had lately created a new tier of intermediate appellate courts and, through the initiative of a very able and energetic judge, Justice Robert C. Finley of the Supreme Court of Washington, a special week-long seminar was organized for the three states' new appellate judges. Two things impressed me particularly about that seminar: first, that the judge-seminarians had done their homework carefully and came to each seminar session loaded for bear; and, second, that the new judges were at least as much interested in jurisprudential and other theoretical questions as in the more practical questions of calendar management, opinion writing, and the like. I came away from the Washington-Oregon-Colorado seminar with two conclusions: (1) that there is nothing like appointment to judicial office to whet a lawyer's appetite for continuing professional education; and (2) that conceivably, just conceivably, there should be a somewhat larger ingredient of legal theory in continuing legal education programs than anyone has yet thought would be endurable to the participants. I concede that my second conclusion is suspect, coming as it does from a card-carrying legal philosopher.

This ends what has been for those of us who have participated in the program a very lively and enjoyable exploration of Professional Education in the Contemporary University. I hope, Dean Kirby, that you will express to President Fawcett the appreciation of all of us who were invited here to take part in this Centennial Program. Speaking for us all, I express our warm thanks, too, to the Centennial Committee of the College of

Law and particularly to the Committee's chairman, the man who did the work in putting the program together, Professor Ervin H. Pollack.

Now I think I may declare this Centennial Conference adjourned, not exactly *sine die* but at least until the event of Ohio State University's second centenary.

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